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FIRE LAW ENFORCEMENT on National Forests Intermountain District

UNITED STATES FOREST SERVICE
FOR DISTRICT FOUR

R. H. RUTLEDGE
District Forester

OGDEN, UTAH
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FIRE LAW ENFORCEMENT MANUAL

DISTRICT FOUR

Forest Service

U. S. Department of Agriculture

R. H. Rutledge, District Forester

July, 1921

INTRODUCTION

"Fire," according to an old Danish saying, "is a good servant but a bad master."

District 4 should make a real effort to keep fire a servant.

The official records show that in the past ten years 3,500 fires occurred in District 4, which burned 550,000 acres. Of these 60% were man-made, and 90% of the damage done was by fires started through human carelessness or from incendiary motives.

Of first importance, perhaps, is the educational work which Forest officers can do in acquainting the public with the fire danger.

But this is not within the scope of this booklet, the objects of which are twofold: Given a man-caused fire, to assist Forest officers (1) in the detection of clues and apprehension of the offender and (2) in the successful prosecution of the case before the appropriate magistrate.

Not until for every man-made fire a conviction shall have been obtained may we feel that the great fire problem has been solved, and if this manual shall be of any material assistance to field officers to that end its publication, it is believed, will have been warranted.

Educational Co-operation.

The success of law enforcement depends upon the measure of co-operation which is secured from the public, and in the case of prosecution, the extent to which magistrates are in sympathy with the efforts of the service in eliminating man-caused fires.

The public and local officials must have an intelligent working knowledge of our fire problems and the steps we are taking to eliminate fires caused through human agencies. It is of supreme importance that the local field officers through propaganda secure this knowledge on the part of the public and local officials before the opening of the fire season. This can be done only by establishing a feeling of personal interest on the part of the community. Fire is every man's danger, and all must accept the measure of restraint if each is to be safe. This is the ground, after all, upon which co-operation must find its basis,—benefit to the community, and in the last analysis to each individual.

Co-operation locally will eliminate practically all difficulties attendant upon the fire problem, except the primary one, the investigating and fixing of responsibility, which, of course, devolves upon the Forest officers.

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PART I

Chapter I

INVESTIGATION

"Plain good intention * * * is as easily discovered at the first view, as fraud is surely detected at last."

1. No Crime Without Clues.

In the nature of human activity there is always evidence of a thing done or accomplished or of the failure to do what your duty to society requires. **Often it is erroneously said that there is no evidence of a fact, or no evidence to connect the perpetrator with the crime. There is always evidence of the fact to be proved, or to connect the perpetrator with the crime. The difficulty is in revealing the evidence to prove the crime and the guilt of the accused. Evidence of a fact always exists; therefore, it is not proper to say there is no evidence.**

2. To Succeed is to Outwit Offender.

The greater a man's ability the more he can accomplish, in this as in any other work. Qualifications peculiarly necessary for an investigator are observation, common sense, work. Nothing is so small as to be safely overlooked; a whole case may turn on what seems a most unimportant detail. On the other hand many details are unimportant. The correct judging of importance hinges largely upon the imaginative power to picture constantly in the mind the whole case and its probable development; beware of letting anything go as unimportant without thus carefully weighing it.

Catching a criminal is a battle of wits; the side which thinks hardest all the time wins. No stone can be left unturned, no reasonable theory left

untried. Success in difficult cases requires special aptitude, as well as experience. But only with hard work and hard thinking, concentration of every energy on the one issue in hand, and whole-hearted devotion, will anyone carry this work to success in spite of discouragements, apparently unsolvable problems, and unfavorable jury decisions when it has seemed that the case couldn't go wrong. And all of us can give these.

3. **Preparation.**

The best success demands thorough preparation. This includes not only a knowledge of the laws and procedure under which we work, but the details of all lawless regions, such as topography, trails, and other get-away avenues; of the persons existing in every community who know all about the rest of the community, and the cultivation of their good-will so that you may turn to them for information when necessary; of the habits, rendezvous, and associates of general community suspects and of their family, business and other relationships, so that in seeking information from others you may not unwittingly kill your own game by approaching one of their close sympathizers; and even of the interior arrangements of their houses and residence premises, such as the location of stairways, bedrooms, closets and storerooms against the possible necessity of serving search warrants there. Such information with respect to residence premises can often be obtained by using the opportunity of plausible business pretexts to call on them.

4. **Starting Out.**

Investigative work, especially in fire cases, demands even greater speed in get-away than suppression. If footprints lie for days, or even until after the suppression crew has tramped over the ground, before they are investigated, not only

may they be obliterated by others, but the defense will not be slow to take advantage, in a court trial, of the possibility that tracks proved to be those of the defendant could have been made after the offense was committed. Our only safety lies in starting investigation on the ground with all possible speed.

4a **How Many Men.** Never rush in a mob. Unless something is wrong with the protection organization, even fire suppression should not require sending many men at first. For investigative purposes two is best, since it provides for witness and assistance, while reducing the chance of confusion and obliteration of clues. The matter of assistance is specially important in case of arrest, to give the investigator some one with whom to safely leave the arrested person and thus keep him from his friends, if it should be necessary for the investigator to go elsewhere or to attend to something else.

4b **Equipment.** To get away quickly the investigator must have his equipment packed and ready beforehand. A notebook is one of the most necessary items. Everything must be written down; no detail is too small. This becomes especially important when the case must be taken up later by a special investigator who has not participated in the initial hunt for clues. Each searcher for clues should also have a map. A U. S. G. S. quadrangle or a proclamation map, if accurate, is the most convenient base map on which to keep the general lay-out.

4c **What To Do.** The first man or men at a fire must either take up the hunt for clues or insure that these will not be destroyed until the investigator can get there; must keep their eyes open for them in either case. They should see that fire-fighters are kept from crowding around the fire until the ground has been looked

over for evidence; must make all fire-fighters stop horses and keep off the trails themselves, for at least one hundred yards from the origin of the fire. Require men in charge of fire-fighting to keep eyes open for clues, note people met on trails, with time of meeting, especially outsiders first on the scene of a fire, who may be the setters, with an irresistible desire to see it burn; to keep ears open for boastful or antagonistic remarks of fire-fighters, who may themselves have set the fire or know of those who did; and to report anything learned at once to the District Ranger or other investigator.

5. **Searching for Clues.**

What are Clues? Anything is a clue which has any connection with the offense or its author. Tracks, camp fire or lunch remains, "plant" used to set off a fire, blanket or other threads pulled off by brush or trees, hairs, scraps of paper or other things carelessly or unintentionally left by the offender, etc., are examples. A good working rule is that everything is to be held as a clue which cannot be accounted for without reference to the offense.

But nothing is really a clue without the interpretation which can connect it with the deed. Some things, such as tracks, the Forest officer can interpret better than any outside expert—in other words we are ourselves the best experts. Other things can only be interpreted by those with special training, for example, the miscroscopist, the chemist, or other specialists. No smallest thing is unimportant until it is certain that it has no useful connection with the case.

5a **The Working Theory.** To guide the investigator in the interpretation of clues or evidence, two things are necessary: (1) every bit of knowledge he can gather before leaving for the scene or on the way, as to the offense, including its

occurrence, surrounding circumstances, and probable author and motive; (2) the building of a mental picture or reconstruction of all that one knows of the case. This must be constantly building and constantly revised. Nothing else will prevent wandering, loss of time, and possible failure. At the start it may consist only of a "hunch" as to who set the fire or where to look for clues; but every new thing found will contribute to it. This mental reconstruction, or theory of the case, is the indispensable bridge by which we cross from things already known to those still to be found out.

5b **How to Search.** After arriving on the scene, first locate the critical point; for example, the origin of a fire. If the point of origin is not evident, beware of jumping to conclusions; the incendiary, or other criminal, does not do the obvious thing, if he has any sense. Then examine minutely the immediate area. Definite system is absolutely necessary in this search. Go systematically around the circle, widening the circle each time; but keep them close enough together (say 3 feet apart at first) to make sure that every foot of ground is minutely examined. Drop markers to show where each circle ends.

5c **Notebook Record.** Record must be kept of everything found and done, and of all conversations held or information learned. Court proof can depend on nothing less than definite written record. Describe everything found, first as it is, then as moved by the offender, and record them in the same definite order in which they are found. The time of every occurrence or find, and of every notebook entry, should be recorded. Also be sure to get from suppression foremen, or other sources, the exact time fire was started, discovered, fighting commenced, etc., time persons were met on trails, and all other significant cir-

cumstances. The time record is essential. But it will be sure to fall down unless all concerned religiously cultivate a look-at-the-watch habit.

The notebook record must contain everything. It must also be in orderly enough form to be made rapid use of. For both these reasons it **must** be made as you go. This takes time; but end-of-day writing-up will not work, and will not be tolerated, on this job.

5d **Map Record.** An accurate map is the best means of showing many of the facts of trespass, for the trespass report or in court, and is necessary in every case. The field draft of this map can be prepared on the ordinary map forms. (On the preparation of such maps, see also sections 70 and 70a.)

Look over your map when made, to be sure it is complete. Especially in maps of a man's trail, as well as of streams, be sure to indicate direction of the travel by arrows.

6. **Handling Evidence Material.**

Do not touch any objects found which will figure as clues or evidence until they have been accurately described, and if possible, photographed, in place. Then pick them up and see if there is anything further to be described which was not evident in place. But pick up nothing which might have been handled by the offender, except by the edges or corners. This is imperative because of the possible finger print evidence, which your own finger prints would obliterate. A good suggestion is to handle such material only with gloves kept carefully cleaned by gasoline. With respect to photographs, remember that any photographs involving scenery, to pass as evidence, must be taken from the level of the eyes (not stomach-high, as camera is ordinarily held) and must show on reverse that fact, together with the direction in which taken, angle of view included, etc.

When anything is found, think at once, what will be necessary to establish the identity and authenticity of this if needed as evidence in court? Collateral supporting or corroborating evidence may be necessary; a witness to its finding is also invaluable. Now is the time, by getting everything thus required, to save the annoyance of a second trip. In any case the finder must put on all objects found a private mark, in a hidden or inconspicuous place, by which he can himself identify them in court as the identical objects found. This together with the notebook record of the circumstances of finding, in their chronological order, in a **bound** notebook, is the best safeguard against an intimation by a shrewd defense attorney, to the possibly serious prejudice of a jury, that evidence has been "planted" by the prosecution.

All objects which it may be desired to use as evidence should be guarded with the utmost care, to avoid possibility of loss, or their purloining by the defendant or his sympathizers. The District Ranger, or special investigator in charge, should take personal charge of all such articles, unless it be convenient to turn them over to the custody of a U. S. Marshal or a sheriff. In the latter case, the Forest officer so turning them over must, of course, take a receipt and so note them in his notebook record that they will not be overlooked in working up his material for the case. This care in having such objects under continuous and responsible custody is also a safeguard against suspicion of "planting."

7. The Plan of Campaign.

The case which we build up must be:

True.

Complete.

Proved by evidence which will stand in court and convince a jury.

7a **The True Case.** We start with a few facts and a tentative theory, based upon them and our best surmises. Whenever new clues or facts are found, ask yourself, What instructions, if any, are there in respect to a situation like this? What does this act mean? On the basis of facts to date, if I were the criminal, what would I do next? There is no time to be wasted, but right interpretation of facts, and right action respecting them, are so essential that the time necessary to insure these will yield bigger dividends than half-baked haste. Moreover, most of us find general instructions so difficult to apply to concrete cases, that it requires specific and conscious effort; but to do it is a constant necessity until familiarity with the instructions becomes second nature. Most of the past failures in law enforcement have been on points directly covered by unheeded instructions. No instructions are beyond improvement; but every investigator will be held responsible for following them, unless other action is proved better by actual results.

With respect to the working theory, the simplest one which will explain the facts is always preferable; but the theory is never complete until the case is closed. At all times, but especially at first, when the theory is based on few facts, it must be lightly held, subject to modification at any time by what shall be discovered next, regardless of whether the new evidence agrees with the previous theory or not.

Such open-mindedness, viewing every new fact on its own merits, is harder to maintain than many people suppose, and requires constant and definite effort. It is extraordinarily easy to overvalue new facts which coincide with one's theory already built, and to undervalue those which do not. But nothing is more fatal to success, or more common among inexperienced investigators, than such a preconceived theory which its holder will not change when evidence contrary to it appears, but

will instead, discredit the evidence, regardless of its weight. Therefore, it is necessary to systematically review one's theory in the light of all facts to date, every little while. Especially beware of believing that any given man could not have set the fire—believe your evidence. Beware of thinking the criminal could not have made so big a blunder, when such apparently develops—he usually does blunder somewhere, otherwise he would never be caught.

This does not mean that every apparent fact should not be searchingly examined and made to justify itself, but only that it must not be discarded, without weighing such proof, because of a theory previously to the contrary. Our theory of the case, then, must be constantly building as new facts are found.

In building a sound theory there are four steps:

Clear definition of the problem. This may not be what it first appears; be sure you know what the difficulty is.

Cast about for possible solutions—not only the first one which occurs to you, but as many as you can figure out; then compare their merits and select the most probable one.

Reason out the developments of this idea to its conclusion; pushed to this conclusion it may not hold water, when this fact is not apparent otherwise.

Constantly test your theory—by searching for further evidence, or by experiment. Keep your eyes open for and give honest weight to, evidence indicating some other theory as more probable.

7b **The Complete Case.** To be complete, the case must answer the following questions:

What was the offense? Where was it committed? When was it done? How was it accomplished? Who did it? Why did he do it?

Memorize these six words, **what, where, when, how, who, why,** and frequently test by them the completeness of both your theory and the facts so far actually established. This will be one of the greatest helps in planning what remains to be done.

7c **The Case Which Will Stand in Court.** Proof which will convince a jury "beyond a reasonable doubt," which is necessary for a criminal verdict, is much more difficult to establish than a case which will convince ourselves. Individual judgments take much knowledge for granted, but a court must, generally speaking, have actual proof of every material point. If you hear a shot, for example, and on going toward it find a man standing over a dead doe, you won't be long in reaching a conclusion. But if you arrest him while he is only looking at it, you are liable to lose your case in court. You might possibly be able to find someone who saw him shoot and the doe fall. But if you lie low until he puts his hand on it to take possession, you have got him on that count, whether you can prove that he killed it or not. Whenever a fact is found which points to a material conclusion, ask yourself, Does this sufficiently prove the conclusion? What else, if anything, will be necessary to establish or corroborate it in court?

A jury will be convinced only by a complete chain of circumstantial evidence, both as to facts, and the proof that they are facts. Constantly review this chain while following clues, to be sure no link is omitted. Also bear in mind that any one chain may be broken somewhere by the defense; therefore build all the lines of evidence possible to your conclusion.

8. Tracks.

Tracks are among our most important clues. If a fire was set, or other offense committed, by

human agency, a man walked or rode there to do it. He may sidestep or cover up tracks in the immediate vicinity of the offense, or they may be burned over, or obliterated by others. Further out he will settle down to normal gait. If no tracks are found at or near the origin, widen out. Begin this wider search at the most likely points; but until the tracks are found conduct the search on a rigid system, so that no area will be overlooked. If it is possible to get wind of the present whereabouts of the suspect, the investigator should, of course, cut away and get him, leaving assistants to connect up the complete trail for use as evidence, or postponing this until the suspect is disposed of. For the man who has gone in pursuit of the suspect it saves time and is usually just as effective to take up the completing of the trail backward, from the point where it was previously left.

8a **Identification of Tracks.** Study of details is essential; dimensions and shape of imprint, nails (present and missing), seams, creases, cracks, or other distinctive marks; wear, repairs, age of track, methods of putting down the foot (twist as foot strikes the ground, etc.), angle of feet (toes out, straight ahead or in) and differences between the feet in this angle, if any; barefoot, smooth, or rough shod horse tracks; specially shaped or weighted shoes and gait of animal (as trot or pace).

8b. **Age of Track.** This is shown by sharpness of impression, by moisture and color, whether leaves and dirt lumps have fallen into it, or whether tracks of insects, birds, etc., or other man-caused tracks. have yet crossed it; and by the condition of broken green twigs, etc. One of the best indications is the condition of manure dropped by an animal. A trail made at night is often known by the way it bumps into or makes detours around obstacles. Whether a horse was

ridden or led may be shown by whether the trail passes under or around low-hanging limbs.

8c **Other Indications.** Speed may be approximately shown by degree of slide at heel, depth of heel edge and toe edge, length of drag of toe, and distance between tracks. The class of person or animal can sometimes be deduced from tracks (high-heeled vaquera boots, new or pointed-toe city man's shoes, horse shoes vs. mule shoes, etc.); also whether drunk or sober; carrying burden or free (feet wider apart, steps shorter and more unsteady with burden); and existence of bodily defects (step is shorter on lame leg, injured knee or hip twists foot tracks, etc). A confidential talk with the local shoemaker or blacksmith, if there is one, will often gain light on the ownership of shoes which make a peculiar track.

8d **Following Tracks.** This requires experience and skill. Points sometimes overlooked are the following: In dry pine needles, breakage or minute differences in color are often discernible on hands and knees, though the needles have sprung back to position and no trace is visible while standing. Tracks in dry grass also require extremely close attention; barring wind, grass will usually hold what impression is made until the coming of night dew, fog or rain. Through brush a trail can be followed by broken or skinned twigs near the ground when it is invisible on the ground itself. When the trail is broken or lost, circle ahead in the probable direction of the trail; stakes set by tracks found will help line up the course.

8e **Comparing Tracks.** To convince a jury we must absolutely identify tracks found with known tracks of the suspect. A track may be compared with a foot or a shoe for identifying marks, but in respect to dimensions, it is better to compare tracks, and also moving tracks with moving

tracks, since tracks made in soft earth, especially at high speed, are always shorter than the foot making them due to push toward center at heel and toe.

Getting check tracks for comparison is often ticklish business. An innocent man should not object to letting his track be measured; but he may take offense at the suspicion. Tact should be exercised not to antagonize innocent persons, but no one can be assumed to be innocent. If the evidence points to guilt, the tracks must be obtained. This is sometimes possible by indirection. In the case of human tracks get the suspect to come outside on some pretext, and lead him across ground where he will leave a good track, which can be measured afterwards. Horses similarly; or if the owner objects, use a search warrant.

8f **Auto Tracks.** How to tell the travel direction of autos puzzles many investigators. On earth roads the following are indicators: pattern imprint of non-skid tires, which is steeper and more distinct on the rear side of each identation; stones which are shoved ahead by wheels, the track of the stone usually being intact close behind where it stops, and dust being piled by the shove on the forward side; imprint of partly imbedded stones slightly displaced by the wheels, the displacement being backward in very small stones and forward (or both forward and then backward) in those large enough to receive any lateral as well as downward pressure; a sprinkling of sand or dust, which is found on the rear side of stones or other obstructions passed over by the wheel, while the forward side is usually swept clean; direction of skid on side slopes or against angling rocks or waterbreaks; the jump (when speed is sufficient) off the forward side of such obstructions, or in dropping into chuck holes; impact (wider tire imprint) on the forward side

of chuck holes or against obstructions; action in ruts, where, in dropping in, a wheel will run off the high side to a feather edge, while in climbing out it will stay in the rut until side pressure forces it to climb out abruptly; the direction in which water drops, or mud, are carried out of a mud hole, or a stream ford; traction slips, which occur in going up steep grades; the turn on curves, which is usually more abrupt on leaving than on entering a curve; the deeper impression due to standing, at stops in soft soil, the impression being more pronounced at its rear side; the "Y" where a machine backs out from a roadside stop. Even if no one sign is conclusive, the sum of those gathered by following the track closely for some distance will in most cases lead to a sure conclusion. Don't give up too soon.

Excessive speed will almost always be disclosed by wind swirl disturbances of the track, the distance of side-throw of sand, mud or water, side lurch on rough road, and the length of wheel jump in passing over obstacles. The size of car is approximately indicated by the width of tire tread, although this is affected by the amount of load, as well as by the air pressure in the tires. When the load is heavy, there is a higher piling up of the dust ridge which is left in the center of the wheel track by the suction and thrust of traction on pneumatic tires.

Tracking autos is rendered easier if, where campers are registered on the forests, the auto numbers are taken.

8g **Proficiency in Tracking.** Whether of autos or men or animals, this proficiency can only be gained by actual practice, and plenty of it. But, while trackers cannot be made from books, one tracker can often tell another new kinks, and we can all learn more by study of our work. Let every man keep his eyes open, and send in

new things of which he learns, or clues familiar to him but not mentioned here, for the benefit of all.

Moreover, many who know cannot tell how they know, and the discussion in these instructions will help us in the latter. The importance of this must not be overlooked; in court we will surely be asked this question, and the opposing attorney will discredit our testimony if we can't tell. "You must not only know that you know, but also know how you know."

8h Record of Tracks. The original track, or a cast or replica of it, is the most convincing evidence in respect to it.

The original footprint can often be solidified sufficiently to be dug out and preserved, by means of water glass. This is specially useful in sand, or sandy soils. If the soil containing the print is firm enough not to be displaced by it, the water glass can be poured directly into the print. If not, dig a shallow trench, a couple of inches wide and deep, around the print and a couple of inches distance from it, and flow the water glass into the trench, until it has been soaked up by the soil so that it shows on the surface of the print. Then let it stand for a day. The print cannot be pried out, but must be carefully freed by digging the soil away from around and under it. It must also be handled with much care thereafter, and this reduces the value of the method when conditions, such as transportation, are not favorable to the required care.

In this and many other cases a more desirable method is to make a cast of the track with plaster of Paris, or neat Portland cement. Plaster of Paris sets more quickly. The builder's finish plaster grade is good enough. Cement is often more available to a Forest officer. From the cast a replica of the track can then be made, or not, as desired.

When the soil composing the print is firm enough, the plaster or cement can be wet-mixed, by stirring carefully into water (sifting it in preferably, to avoid lumps) to the consistency of thick cream, and flowed directly into the impression, either by pouring, or, if greater care is desirable, from a spoon. Pure plaster of Paris sets in about 5 minutes and therefore requires rapid work; its setting can be retarded, however, if desired, by adding a little vinegar. When about ½ inch depth has been flowed in, reinforce the cast by laying in it, crossed at right angles, several thin watersoaked strips of wood. In the absence of these, small green twigs, or even stout string, will help. After adding another ½ inch of plaster the cast can again be reinforced, if desired. This is hardly necessary with cement. The finished cast should be at least one inch thick. If this is greater than the depth of the track, a wooden box or earthen dam can be built around the track to hold the liquid in.

In dry sand, ashes or dust a cast can usually be secured by sifting in very carefully dry plaster of Paris, or cement (preferably with a flour sifter held close above the print), then sprinkling water slowly onto the dry plaster or cement (for example by wringing out a cloth over it), until it has become moistened thoroughly, using care not to allow water to run over on to the exposed dust, etc., surrounding it. When a ¼ inch layer of cast has thus been set, the remaining thickness may be built up with wet-mixed plaster, or cement, and reinforced as usual. With care this method may be successfully used to record even tracks in snow. A cast made in this way is never as strong as a wet-mixed one and must be handled with more care.

Should any difficulty be experienced in using the dry method, wet-mixed material can be used (except probably in snow, on which this has not yet been tried), by first spraying the print with a

solution of 1 part prepared floor shellac in 4 parts wood alcohol, using for the purpose one of the ordinary tin plant sprayers commonly sold for garden purposes. The spray must first be directed slightly upward, over the print, so that the air current may not disturb the loose ash or dust material, until the spray dropping gently upon it has created a slight crust. This usually requires about 10 minutes of such spraying. After waiting 5 minutes to allow the shellac to dry somewhat, the sprayer may be pointed directly at the print and the spraying continued for 15 minutes longer. As much as a quart of shellac solution may be required for this treatment. After a half hour's drying, wet-mixed plaster or cement can then be poured into the track. Even tracks on a dusty board floor can be recorded by the dry plaster or shellac-setting methods. When such a track has been set by shellac, if a section of the board can be sawed out, the original track thus set can be used, with careful handling, as evidence in court, if desired.

To make a replica of the original track, from a cast, the upper surface of the cast should be as level as possible. The cast should be washed clean, and then greased, either with an oil which is fluid, at air temperatures, or, if thicker, heated until it is very fluid, so that no crevices or other marks may be filled up and thus be obliterated in the replica. The greasing is to prevent sticking. The cast is then laid, top down, in a suitable box or other flat-bottomed receptacle, and wet-mixed plaster or cement flowed over it, and reinforced, as in making a cast.

In handling either plaster of Paris or cement in this work it must not be forgotten that they are still moist and weak for some time after they set. Casts are not sufficiently dry and strong to bear any but the most careful handling within a week after they are made. Shrinkage is negligible (under 1%) in both plaster of Paris and Port-

land cement, and casts or replicas made as above will exactly duplicate impressions copied. But shrinkage will occur in clay or adobe in which a track is preserved, if it dries out before the cast is made. Either the original track or a replica so made may therefore be expected to be slightly too small to accommodate the boot or foot which made the track, by the time it gets to court, and care should be taken not to allow a jury to be prejudiced by this fact.

Sometimes it is desirable to make an original track, as for example by the shoe or boot worn by a suspect in committing an offense, for direct comparison with a track found at the scene of a crime, or with a replica of the latter; or to make an original and from it a cast to compare with one from the latter. This can be done by using, in a suitable shallow box, either a clay soil which will take a good impression and thereafter stand handling, or, much better, by using the composition called modeling paste. To prepare the latter stir 2 pounds of common gloss starch in a little cold water until it is entirely smooth and free from lumps. Then add hot water and boil, stirring constantly to avoid burning, until it is about as thick as can be stirred. Remove from the fire and, after letting stand for five minutes, stir in, a little at a time, 1 pound of table salt. After cooling for an hour the surface of the paste will have assumed a rubbery consistency and will take a fine impression, by stepping in it with the shoe exactly as would be done in making any ordinary track. Considerable shrinkage occurs in further drying, but no more than occurs in clay of a similar consistency. The composition becomes stiff and leathery and will keep for a long time, although it will crack as it dries and hardens. A plaster or cement cast can easily be made from a print in it. It will stick, however, so that it cannot be removed without destroying the matrix. Removal is best done by washing off the composi-

tion from the cast, the former being quickly softened and disintegrated by water. An original track cannot be made successfully in plaster of Paris. Cement is believed to be usable for this purpose, but no experiments have been made to determine the best methods of procedure.

Little of value is in print on the preceding methods of recording footprints. A large part of the above has been determined by original experiments, done chiefly by Mr. Brereton of District 5. Quite as much that is new can be learned in almost any line of our work by anyone who will experiment for himself to find out. It is hoped that many Law Enforcement men will try experiments in some line of the work and report results for the benefit of all.

If it is not feasible to secure the footprint itself, or a cast of it, the best remaining method is to photograph the track. The camera lens must be exactly parallel to the surface photographed, to avoid distortion of perspective. This can be done most conveniently by the aid of a clamp for attaching a camera to a board or other similar support at any required angle. For use in court the photograph can be enlarged to the exact size of the original. If in photographing, however, a rule is placed alongside the footprint, the scale of measurement will appear in the photo itself, regardless of the size of the latter.

If no better method is available, draw an exact diagram of the track, on cross section paper, if possible. For measurements use two lines at right angles through important detail points of the track, and parallel to cross section lines. The perpendicular distances from any point to these respective lines will then absolutely fix its position.

9. Finger Prints.

Few people are acquainted with the value of finger prints as evidence. They are very valuable, where they can be obtained; give absolute identi-

fication; are easy to use. They are produced by the oily impression of the minute ridges on the surface of the skin, and are left even when hands are clean, although very faint when the skin is dry or immediately after washing it with soap. They may be found on anything a man handles, which has a smooth enough surface (as papers, cans, bottles, drinking glasses, etc.), if they have not been obliterated by subsequent handling, and can be made visible by appropriate treatment, any time within several hours after they are made; but the sooner the better.

9a. **How to Manipulate.** Sprinkle a powder of contrasting color on the surface containing prints. Distribute by tapping from a camel's hair brush or by patting with such a brush (but don't rub), or by agitation on the desired surface. Blow off the excess. Where the skin ridges touched the surface the powder will remain.

Powders used by police officers are aluminum (preferably 10,000 fine) and bronze, one or other of these forming sufficient contrast with almost any color. With expert manipulation these give the best results. Dragon's blood powder, for light surfaces, and talcum powder or gray chalk, for dark, seem to work better, however, for those not expert in manipulation. All of them can usually be obtained at drug stores. When these are not available, powdered charcoal or very fine pencil scrapings answer for light surfaces; borax, even flour, for dark surfaces. But all powders must be dry; they pile up and work badly if damp.

Prints thus developed are easily smudged by friction. They can be set by spraying lightly with a solution of 1 part white shellac (prepared floor shellac, not solid gum) in four parts wood alcohol. Dragon's blood, however, can be set, without the use of shellac, by heating slightly with a match flame, after application to the desired surface.

On a large surface, when it is not known where the finger prints may develop, they can be brought out in a brown color by heating the paper or other surface in a closed box with iodine crystals; the prints can then be recorded by one of the above powders, the iodine color vanishing after a time.

9b. **Identification.** The pattern of the skin ridges is different for every individual. The lines fall into classes such as arches, loops, and whorls, which have been minutely classified for police records; but nothing is necessary for identification except a close examination and comparison, which anyone can make. This is easier with a hand lens. The latter is an extremely valuable aid to an investigator. The "barrel" type is best and can be obtained on official requisition. For use in court, photographic enlargements of finger prints are desirable, so that the jury can all see the same one at the same time. Prints submitted to the District office will be enlarged on request.

Except after a man is arrested, we cannot compel him to submit to making his finger prints. His known prints for comparison with ones found in connection with a crime must otherwise be obtained by getting him to handle some paper on another pretext. If this paper has typewritten matter on it, this may obscure a thumb print, but the finger prints will be on the reverse. Such paper must of course be free from previous finger marks. It should therefore be drawn from inside a new pile, and be handled only by the corners, and between the first and second fingers, as the sides of the fingers leave little mark; better still, use cleaned gloves. When prints can be compelled, as from a man under arrest, they should be taken by pressing the finger on a stamp-ink pad and then on paper. Prints should be taken for all ten fingers and thumbs. However obtained, each print must be labeled as to finger and hand, since

comparison is fruitless unless it is certain that the prints are of identical fingers. Skill in both making and identifying prints requires practice. Better do it before important results depend on your work.

10. **Restoring Mutilated Papers.**

Piecing Torn Paper Together. First hunt for corner pieces, then edges, then work up the interior. Paste on a transparent medium, as tracing linen—the back may be important—or lay on a glass plate, lay another over and bind together. Clean the glass first.

If writing on paper is not in copying ink or indelible pencil the paper can be moistened, by spray from an atomizer or by holding in steam from a tea kettle. This helps to straighten it out, ff badily curled or bent.

10a. **Dim writing** comes out plain in a photograph.

10b. **Worn or fragile papers** can be made indestructible for handling, by dipping into a solution of 1 part stearine in 3 parts collodion, and let dry 15 minutes.

10c. **Restoring Burnt Paper.** Writing is usually still legible. If not entirely reduced to ash, it can generally be used; but it is very fragile. Lift up by passing another paper beneath. Moisten as above, to remove curl. Slide onto a piece of gummed tracing cloth and very carefully press down. Trim the tracing cloth to exact edges of paper, then piece together as in the case of torn papers. Burned papers are very fragile, even when gummed. The whole process requires skill—better practice in advance.

11. **Taking Impressions..**

Relief impressions of raised surfaces can be taken by using moist blotting paper and letting it dry in position. Impressions of more uneven, or

solid objects, may be obtained by similar use of a mass of wet tissue paper.

12. Preserving Perishable Evidence.

Perishable evidence is often best preserved by placing it in cold storage. It can often be preserved also, in alcohol. In the absence of cold storage, formalin, or formaldehyde, is best for fish or game meat. These preservatives destroy color, however. If this is important, wire the District Forester for advice, stating color and exact nature of material. If it is impossible to preserve any article of evidence, be sure to have witnesses to its finding, and its nature or identity, while it is yet in its original condition.

13. Making Use of Experts.

To the layman, one of the most striking services of the expert is that of the microscopist, who deals with a world invisible to the unaided eye. He can tell from a hair, for example, whether it is from deer or beef, horse, dog or human, and the race, habits and probable age of an original human possessor; from carpet sweeping dust the number, age, character, habits, food, and recent occupation of, as well as visitors recently entertained by, the occupants of the room from which taken; from finger nail deposits the food, occupation, habits, and whereabouts of the person from whom they are taken, for a week or so prior to that time; and often substantially the same information from a shred of clothing, or even knives or other articles much handled by him. They can identify beyond question deer or other game meat or blood as against beef, chicken, etc., and often such things as soil on a boot, as being the same as that taken from the locality of a fire or other offense, hair on a blanket as that from a particular horse, or human hair as that from a certain suspect, etc. Manure dropped by an animal being tracked may be a valuable clue, since the microscopist can support the Forest of-

ficer's judgment by certain determination of the kind of animal from which it came and the food materials represented.

But the microscopist, chemist or other scientists, are not the only experts who can serve us. The dentist (as to teeth marks, etc.), the shoemaker, the blacksmith, the locksmith, the printer or other paper expert, the observant clothing or dry goods merchant, or any other man who works in some special line, can often tell us more than we can see ourselves respecting some clue relating to their specialty. We must be constantly on the lookout for chances to make use of such help. Anything requiring expert help of a kind not locally available should be submitted to the District Forester, or the matter taken up with him, unless it is possible to get quicker help, for example, in the case of finger prints, from the experts of the police department of some nearer city.

It should also be borne in mind that expert testimony, which is usually in the nature of opinion rather than fact, must be given by the expert responsible for it and not by proxy, and arrangements should be anticipated for his attendance at court.

14. Verbal and Documentary Evidence.

Material clues or objects of evidence will seldom or ever be all that is necessary to prove a case. If no material clues can be found, the only recourse, indeed, is to lie low and mouse around until some person or persons can be found who know something about the offense and its commission or committor. This takes time, patience, and skill, often more than the administrative ranger feels he can spare; but it must be done. Sometimes, however, he cannot do it because the whole community knows him, and the guilty ones and all their sympathizers would soon know what he was after. In such cases a special man,

whom nobody knows, will probably have better luck, and the assignment of such a man may be requested.

15. **Getting a Lead.**

In deciding to whom to go for possible evidence, the best guide is again a carefully built up mental picture of the case—a working theory.

If possibilities permit, eliminate at once the busybodies, who always know all about it but generally know nothing worth much, and go after those who really know most, or were first on the ground. If nothing better develops, figure out a tentative suspect, on some ground, such as most probable motive, and start on that basis. If your tentative suspect should not be the right one, questions implicating him are likely to draw from an honest witness indications as to the true suspect, when he would not have given them in reply to general questions.

Before doing these, it will be desirable, however, to get preliminary information, as a protection against witnesses lying or otherwise trying to mislead. It is indispensable, as soon as any real lineup begins to appear, to consider every scrap of information which is at hand or can be gleaned, with respect to family, business, or friendship relations of possible suspects, so as to safeguard giving away anything unwittingly. Use every opportunity to get from fair-minded witnesses information on the trustworthiness and connections of others who must be dealt with.

16. **Helps to Interrogation.**

Knowledge of Men. Nothing else can make up for a knowledge of men in this work. "A witness will tell nothing or make but inaccurate and unimportant statements to an investigating officer without shrewdness and tact, while the very same witness will make precise, true, and important statements to an officer who can read and knows how to handle him." (Gross: "Criminal Investigation.")

Witnesses can be grouped broadly into two classes, those who will tell the truth, and those who probably, or certainly, will not do so. This resolves itself chiefly into a question of motive. Persons having no interest in the offense or the offender will generally tell the truth; the testimony of those who have such an interest should at least be taken with one's weather eye open for squalls. However, it should not be overlooked that one of the latter class may be upright enough to tell the truth if forced to do so, while fear of consequences may swerve a weak-kneed innocent from the path of truth.

Truthful witnesses may again be divided into those who are willing to tell what they know and those who are reluctant to do so. Most people are of the latter kind; the average American not only has an exaggerated unwillingness to "peach," even on a wrong-doer, but is himself so busy that he doesn't want to get mixed up in other people's troubles if he can avoid it. The person who is anxious to tell on another, unless young and unsophisticated, has usually behind his willingness some grudge, the influence of which on his truthfulness must be weighed hardly less carefully than that of friendship for the offender.

We can help our own judgment of men by systematic study, in our every day business, of truthfulness, the motives of untruthfulness, etc. A careful study of cases where we believed and were double-crossed will reduce our own credulity. Lack of truthfulness is very common, and a man is not always in league with crime who fails to state the exact truth.

Study of any previous court testimony of a lying witness helps. A man nearly always sticks to the same lines of mental side stepping in such things as justification of his own conduct, throwing suspicion on others, etc.

16a. **Reputation for Accomplishment.** Few things help more than a reputation on the part of

the investigator for getting men when he goes after them. If wrong-doers and their sympathizers can be made to feel, "Well, if that Forest Service man is on my track, the jig is up and I might as well tell the truth," the game is nearly or quite won at the start.

16b. **Attitude of Officer.** Much of the success to be gained depends upon this. Judge your man. Be short, snappy, commanding with the bold; patient and considerate with the timid. Unnecessary officiousness, or insolence or contempt, however, will shut up most men like a clam. Courteous and considerate treatment will open a man't heart—and probably his mouth—especially if others have just treated him harshly.

16c. **Who Should Do Interviewing.** The same investigator should ordinarily handle all the main issues of a given case. This applies especially to the principal interviews. After a case once takes shape, success depends so much upon a comprehensive knowledge of everything previously developed that important issues cannot safely be divided.

17. **Interviewing Truthful Witnesses.**

Getting the Witness to Talk. Few witnesses are anxious to talk to an investigative officer. "Rapport," as the police call it, or getting a man to the point where he will talk freely, can often be established more easily by directing the conversation along lines in which he is personally interested, even though at first this has no connection with what you want him to talk about. A little flattery will often open the door which stays locked against unrelieved "business."

If he still does not tell what you believe he knows, it may be that he fears you want to mix him up in the crime. Such a suspicion should be guarded against, when unfounded. Antagonism can often be avoided by stating to the witness

that you have been requested by headquarters, or are required by regulations, etc., to get the facts in this case, and will greatly appreciate it if he can tell you anything about it—thus putting it on the basis of routine duty, and dispelling any suspicion that you want to implicate the man addressed. If the reluctance is due to fear of the criminal, or desire to avoid the notoriety or loss of time incident to court testimony, and cannot be overcome in any other way, tell him that if he will tell you what he knows you will only use it on the criminal, without divulging its origin; but if he won't, he will have to go on the stand, and tell it in front of the criminal. The use of good evidence in whatever way seems best should not be hindered by such a promise if avoidable; but the use of information in the way indicated may be extremely valuable, and "half a loaf is better than none."

17a. **Getting the Story.** There are two considerations: (1) to get as complete a statement from the witness as possible—be sure nothing essential is omitted, but don't let him ramble aimlessly; (2) to be sure he is telling the truth. The latter may not follow, even with willingness on his part.

The best safeguard is a clear mental picture of the case thus far, which shows us what we want to get, and thus prevents the omission of important items. The six watchwords of a complete case (see Sec. 7b) are again valuable reminders.

The method to be used depends much upon the witness. But unless he wanders beyond forbearance, it is best to let him tell his story straight through in his own way. Then question and rehash until it is certain that he can not or will not add anything more of value. Take sufficient time, no matter how hurried you feel. Better not "start something" in the first place than be in too much of a hurry to permit getting the facts after you have started it.

Write it all down as he tells it—unless he shies at that; then do it at the end. In this case, opposition to having a statement written down may often be allayed by saying (along the same line as suggested in the preceding paragraph), "Now, I'd like to put this down, so that I can include it in my report and won't quote you wrongly." If rightly handled he will doubtless help you to get it all straight, and can then hardly refuse to sign it. A much more complete and satisfactory statement will ordinarily be obtained by thus writing it yourself than by letting him write it.

Read to the witness what you have written, word for word, ask him if it is correct, change any items which he may desire corrected, have him sign it and have his signature properly witnessed.

In case a witness refuses to make or to sign a written statement, but will talk, get him to talk in the presence of several reliable witnesses, and afterward write down the essential substance, as nearly verbatim as possible, of the first witness' statements, either yourself or in collaboration with the others, to which they will swear in court.

In addition to the record of what was said, put down in your notebook the circumstances of the conversation, persons, witnesses, time, and also all the conclusions for future guidance which you can draw from the facts thus learned.

Some men cannot be induced to make a statement, but say if they are put on the stand they will tell the truth. If their resolution not to talk cannot be shaken, the only thing to do is to try to get indirectly as shrewd an idea as possible of what they can testify about. Sometimes, however, things can later be learned which may induce them to change their minds and make a statement on a second visit to them. One of the most effective of such leverages is self-interest. For example, show him how it will benefit him to convict the offenders, or damage him to let

them go free; or, even more effectively, when facts can be found to justify it, intimate that the criminal or his sympathizers are trying to implicate the witness in the crime, or otherwise damage him.

17b. **Legal Bearings.** Unrecorded verbal statements must have, or are greatly strengthened by, corroboration. Moreover, hearsay testimony by another as to a verbal statement of the accused can be used in court only when it has been made in the presence and hearing of the accused without being challenged by him. If B says that the suspect, A, told him that he (A), set the fire, this would hold; but to establish this fact on the testimony of C, we must, previous to the trial, have C make this statement in the presence and hearing of A, and also of other witnesses who can testify that it was so said. It is necessary to bear these facts in mind at the time of getting evidence.

17c. **Unintentional Offenders.** The general methods indicated for truthful witnesses apply largely to this class of trespassers, such for example as those who thoughtlessly leave camp fires burning, especially if they are inexperienced and did not realize the danger. Courteous treatment and an evident purpose only to do one's duty, with regret for the inconveniences necessarily inflicted, are usually more effective than treating them like common criminals, and will often induce confession, with a readiness to "take their medicine" and not do it again. If more is necessary to achieve this result, it should be remembered that every man has a "blind" side, a weakness through which he can be approached with his defenses down, or through which they can be battered down. It may be a hobby, such as horses, automobiles, guns or some sport, or politics, or religion, reputation, even home or mother; whatever it is, the officer is justified in using it to get

to the truth, when men have violated the laws of society, and are further double-crossing it by attempting to conceal the truth.

Only if the offense has shown criminal disregard of known danger, or if the unintentional offender becomes hostile or defiant, is anything usually gained by using the more drastic means discussed under "Hostile and Lying Witnesses." The man who has set a fire unconsciously is an unprofitable man to "sweat," because he has no guilty conscience.

If an offender is found on whom you have sufficient evidence, and he objects to being taken before a magistrate, a good expedient is to ask him if he is guilty; if he denies, then he has not valid ground for objection.

18. Inaccuracy of Statement.

Causes of Inaccuracy. When a man is willing to tell the truth, untrue statements may result from the following causes:

Poor observation. A man may see only part of a total action and have a very inadequate or mistaken notion of the whole; a man sometimes sees what he expects to see; people often hear imperfectly or mistakenly.

Poor comprehension and reasoning. Inference is a part of every mental operation. When we see a clock face, we take for granted a clock is behind it, but this is not necessarily true; a tenderfoot thinks mountains are much nearer than they are, because he infers the distance which the given appearance impiies in low country; illiterate people distort long sentences, and piece out by inference to a twisted meaning.

Poor memory. This is very common. Beware of people who remember everything; it is usually open to suspicion. Memory can be helped by talking of the event in question, often as to unimportant incidents, or of a man's occupation connected with the thing to be remembered. But give

him time; don't hurry. Do not press an emotional witness too far; there is real danger, especially with such a person, that you may make him remember what he never saw or heard or knew, except for your forcible suggestion.

Influence of other people's statements. Untrained persons who have seen or known part of an exciting incident unconsciously try to complete the matter by fitting what they have seen or know to details told by others. They may even end, without untruthful intent, by weaving the whole garbled mess into their own story as what they saw and heard and know.

Strong feeling. Excitement and fear tend to exaggerate; but sometimes overlook important details.

Temperament, age, occupation. A ranger looking at a bunch of cattle sees also whether the range is overgrazed, or grazed in patches due to poor salting or water development; a city man sees cattle, but not the other factors, and could not be expected to given an intelligent statement on such matters.

Fear of consequences. Be sure to relieve a witness' mind of a possible impression that you want to implicate him, etc., if such inferences are without cause. Frightened people, imagining themselves suspected, always shuffle in testimony. This should be a danger signal, although the cause of the shuffling may not always be the one here discussed.

Poor questioning. Good questioning requires hard thinking. Be sure nothing is missed. Follow your own course and do not be led or pushed, either designedly or accidentally, by the witness.

18a. **Increasing the Accuracy of Statement.** Much can be done by careful questioning and suggestion to clear up obscure statements or supply omissions. Check the witness' accuracy; e. g., as to height of people, ask him if the man

he mentions is as tall as yourself; check distances by asking about something in sight; verify his power of recognizing persons, estimating numbers, etc. It is sometimes necessary to verify statements oneself, independently of the witness. Scrutinize the witness' testimony all the time for indications of intentional untruthfulness.

19. Interviewing Hostile Untruthful Persons.

Preparation for the Interview. For successfully interviewing this kind of persons thorough preparation is indispensable. Nowhere else is preliminary knowledge so essential, both as to the connections and interests of the persons interrogated, and as to a thorough grasp of your case and exactly what you want to find out. Finally, the circumstances and conduct of the interview itself must be carefully planned.

If you can prevent it, don't interview such persons, especially the suspect, on their own ground, or among their own friends. Get them to come to the Supervisor's or ranger's office, or a convenient room in town; at least to a place away from the support of their familiar surroundings and people. This may not be feasible at the first interview; but if you are convinced, or become so by talking with them, that they know material facts which they have an interest in keeping from you, it is often wiser to postpone the serious attempt to get these until it is possible to do so under circumstances more favorable to it. On the other hand, it is desirable to question such persons, when possible, before they learn that they are suspected, and have then time to talk to each other. At least try to prevent such communication between the times you question separate ones. Special care must be exercised to interview a group of related persons in the best order to prevent "slopping over" between them. It is usually best not to interview two or more hostile persons together. Keep them apart and interview them separately, whenever possible. In coming up to

two together, keep out of sight entirely, if possible, until close up to them so as to give no chance for framing up something while you are coming.

Always conduct interviews with an enemy to your case strictly as an official. Be courteous, but don't introduce everybody all-round, or joke or in any other way help to put the witness at his ease.

Especially when the time has come to hammer hard for the facts, or for a confession, it greatly helps to surround the occasion with as much circumstance and formality as you can bring to bear. Have your own witnesses and assistants at hand; the more of them who are unknown to the person to be interrogated, or known only as officials, the better. A person who is either the supposed criminal, or his accomplice or sympathizer, as is here assumed, will deceive you if he can, and will not tell you the truth if he can help it, i. e., unless you can tangle him, or otherwise bring pressure enough upon him to compel him to do so.

Note: No claim to originality is made for this Chapter on Investigation as it is taken almost wholly from the very excellent chapter upon that subject in the Law Enforcement Manual issued by District 5 in 1919.

Chapter 2.

EVIDENCE

"To the law and to the Testimony"

20. **Definition.** The law of evidence relates to the use of evidence before judicial tribunals and comprises certain rules as to the exclusion of evidence and others which govern the manner of presenting evidence in Court.

21. **Judicial Notice.** There are certain facts of which the Court will not require evidence because they are so well known, so easily ascertainable, or so related to the official character of the Court that it would not be reasonable to do so.

Among these are: the laws of the United States, and of the several states; official acts of the Executive Department, such as rules and regulations made pursuant to the Statutes.

22. **Confessions** are admissions of guilt by persons accused of crime. A confession to be admissible in the evidence must be voluntary. If made as a result of threats or inducements, it is inadmissible.

23. **Character** of accused cannot, as a general rule, be shown for the purpose of proving his conduct unless accused offers evidence of previous good character in which event the prosecution to meet it can show such traits as would lead to an inference of guilt. The character of a witness for veracity may be shown for the purpose of affecting the weight of his testimony.

24. **Opinions** of witness as to existence or nonexistence of a fact are generally inadmissible.

25. **Expert Opinion.** This class of evidence forms an exception to the rule and is admissible.

26. **Hearsay** evidence is generally inadmissible except where in the nature of things there is difficulty of other proof or the circumstances furnish some guaranty of reliability.

27. **Public Records** in which are recorded facts to be preserved for public reference are admissible. In this class would fall Forest officers' diaries, or other original records if made contemporaneously with the act or event recorded.

28. **Privilege.** An accused is absolutely privileged from testifying upon his trial for the crime charged against him. The fact that an accused exercises this privilege and remains silent furnishes no grounds for an inference against him, and must not be commented on at the trial. An accused who waives his privilege and takes the

stand in his own behalf places himself in the position of an ordinary witness and is subject to the usual cross examination.

29. **Exclusion of Witnesses.** It is within the discretion of the Court to have all or any of the persons who are intended to be used as witnesses in the case excluded while any one other witness is being examined. Forest officers will frequently find that to have all witnesses except the one on the stand excluded will materially assist in the successful handling of a case, since it will prevent uncertain or dishonest witnesses from being affected by testimony of other witnesses.

30. **Leading Questions.** Upon direct examination of a witness a leading question, i. e., one which is put in such a way as to suggest to the witness the answer which is expected or wanted, will not be allowed. In the case of a witness known to be hostile to the party calling him, the rule does not apply. In cross-examination leading questions are permissible.

31. **Objects, Maps, Photographs.** Generally admissible to explain or illustrate testimony of a witness. Under this head would fall plaster casts of shoe prints and incendiary's fire "plant." However, these must be duly authenticated, i. e., presented by a witness having personal knowledge of their origin or making, and must be material to the issue.

32. **Circumstantial.** Despite the general understanding to the contrary, circumstantial evidence is received upon the same basis as so-called direct evidence. All evidence is largely circumstantial, and even when most direct, depends upon circumstances for its credibility, weight and effect. In cases depending upon circumstantial evidence, where the circumstances proven are not only consistent with the guilt of a defendant, but are

also inconsistent with his innocence, such evidence in weight and probative force may surpass direct evidence in its effect upon the court or jury.

33. **Best Evidence.** A writing is the best evidence of its own contents and must be introduced unless it has been lost or destroyed, or its absence is otherwise satisfactorily accounted for. For example, being in the hands of the adverse party. Exception: in the case of public documents and records, exemplified copies are received.

Chapter 3.

ARRESTS

Authority—How and When Made

34. **Power to Arrest—Forest Officers.**

"All persons employed in the forest-reserve and national-park service of the United States shall have authority to make arrests for the violation of the laws and regulations relating to the forest reserves and national parks, and any person so arrested shall be taken before the **nearest United States commissioner,** within whose jurisdiction the reservation or national park is located, for trial; and upon sworn information by any competent person any United States commissioner in the proper jurisdiction shall issue process for the arrest of any person charged with the violation of said laws; but nothing herein contained shall be construed as preventing the arrest by any officer of the United States without process, of any person taken in the act of violating said laws and regulations." Act of Feb. 6, 1905. (33 Stat. 700).

35. **Procedure When United States Commissioner Not Available.**

For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any

commissioner of a circuit court to take bail, or by any chancellor, judge of a supreme or superior court, chief or first judge of common pleas, mayor of a city, **justice of the peace, or other magistrate, of any State** where he may be found, and agreeably to the usual mode of process against offenders in such state, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had. (Sec. 1014, U. S. Revised Statutes.)

36. **Nearest Magistrate.**

It shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the **nearest commissioner** or the **nearest** judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial, and the officer or magistrate issuing the warrant shall attach thereto a certified copy of the complaint, and upon the arrest of the accused, the return of the warrant, with a copy of the complaint attached, shall confer jurisdiction upon such officer as fully as if the complaint had originally been made before him, **and no mileage shall be allowed any officer violating the provisions hereof.** (28 Stat. L. 416.)

37. Due Process of Law.

Under the constitutional clause which declares that no person shall be deprived of life, liberty or property "without due process of law," no arrest can be made without a warrant, except in cases of felony and except in cases of misdemeanors committed in the presence of the arresting officer.

In cases of ordinary misdemeanors, an officer cannot arrest the offender without warrant, unless he is present at the time of the offense. The fact that a warrant has issued, directed to any officer, will not avail such officer, unless such warrant be in his possession at the time the arrest be made.

One charged with a misdemeanor cannot be arrested after the commission of the act, without the proper warrant. An officer cannot arrest without a warrant for a previous offense even if it had been committed in his presence, however short the interval of time he was absent. The arrest must be immediate.

38. Arrest Under Warrant.

Where a warrant is issued against a person whose name is unknown the best description possible of the person to be arrested, sufficient to indicate clearly on whom it is to be served, must be given, by stating his occupation, personal appearance and peculiarities, the place of his residence or other circumstances by which he can be identified.

A warrant in due form, issued by competent authority, is a complete justification and protection of an officer effecting the arrest. But a warrant issued in blank, where the name of the person arrested was afterwards written in without authority, is no protection to an officer.

An officer cannot justify an arrest made under a warrant which does not give the first name of the person, or recite that such name is unknown; nor

under a warrant giving a name different from that of the person arrested. A so-called John Doe warrant should describe the person to be arrested and recite that his true name is unknown.

A warrant issued against "persons who are suspected" of the crime alleged in the warrant, without naming them and charging that they have committed these crimes, is not sufficient.

39. Arrest Without Warrant, for Crime Committed Within View.

To justify an arrest without a warrant it must appear that the accused will escape if the procurement of a warrant is attempted.

In cases of felony an officer may arrest without warrant upon information supplied by others where he has reasonable cause. For those offenses which are felonies, an officer may arrest a person on reasonable ground for the conviction that he has committed the offense.

A mere belief that a crime has been or is being committed, without some basis of facts and circumstances on which to rest, is not sufficient. Belief, however well founded, will not justify arrest without a warrant for a mere misdemeanor.

40. Felonies and Misdemeanors.

In general, all offenses which under the statute may be punished by imprisonment for more than one year are felonies. Those offenses punishable by fine or by fine and imprisonment for less than one year are misdemeanors.

The wilful setting of fires on the public land or on a National Forest and the building of a fire and leaving it before it is extinguished, are felonies.

The statute of February 6, 1905, expressly gives to Forest officers the authority to arrest without process any person taken in the act of violating the regulations of the Secretary of Agriculture.

41. Right of Private Person to Arrest.

At common law, it is the duty of any person, in whose view a felony is committed, to arrest the offender. So the owner of property, finding a person in the act of taking it unlawfully, may arrest the taker without a warrant. And a Forest officer finding a person in possession of government property known to the officer to have been stolen, satisfactory explanation of the possession not being given, may arrest the person if he has reasonable ground to think such person stole the property. So, also, a private person may arrest one found setting fires on a National Forest. It is a power to be exercised with caution, since the fire may turn out to be lawfully started.

42. Notice to Be Imparted to Person Arrested.

The person arrested should have notice that he is arrested by lawful authority. Any actual notice of arrest by lawful authority is sufficient, and in such case the officer need not exhibit or read his warrant. Notice of arrest is imparted where the person making the arrest is a known officer, or by seeing his uniform or badge of office.

43. Right to Use Necessary Means to Effect Arrest.

An officer in making a lawful arrest has the right, and it is his duty, to use every necessary means to make the arrest, and if resisted he may use sufficient force to overcome the resistance, and if the person resisting is killed by the officer it is justifiable homicide.

He has no right, however, rudely and with violence to seize and collar his prisoner, unless resistance be offered, or an attempt be made to escape. Unnecessary harshness or violence should be avoided.

He has a right to use his discretion as to the necessity for using handcuffs, and is liable only

in case of a clear abuse of such discretion. A Forest officer has the right to carry concealed weapons when necessary in the performance of his duties on the Forest and while actually engaged therein, notwithstanding a state statute against it.

44. Authority to Break in Doors.

Where an officer has reasonable cause to believe that the person named in the warrant, or a person whom he seeks to arrest on a charge of felony, is in the dwelling-house of another, he has a right to search the house, and, after demand for admittance and notice of his purpose, to break open doors if necessary to prosecute the search. The officer should first demand admittance, and explain the purpose of his entry. But upon mere suspicion a private person has no right to break open doors or kill the suspected person to prevent his escape.

45. Right of Officers to Call on Citizens to Assist

An officer has a right to call upon any citizen to assist him in the execution of his warrant, and anyone refusing to assist is subject to prosecution. Persons coming to the aid of officers are entitled to the same protection as the officers themselves.

46. Killing by Officer in Making Arrest.

In no case must a felon be killed in attempting to effect his arrest if the officer can capture him by obtaining assistance or otherwise. It has been held that so long as the person sought to be arrested on a charge of murder was content peaceably to avoid arrest, the pursuing party had no right to kill him.

47. Not Authorized in Cases of Misdemeanor.

In misdemeanors, the voluntary killing of the accused in the effort to arrest him is murder. In

making an arrest for misdemeanor the officer can kill or inflict great bodily harm upon the person only when, by reason of resistance, he is placed in danger of like harm.

48. Right to Resist Illegal Arrest.

Illegal official action may be forcibly resisted. A person may resist an illegal arrest. If the person making an illegal arrest is not known to be an officer, resistance is justified, even to the taking of life.

Even where arrest is lawful, if the officer illegally shoots at the person whom he is seeking to arrest, the latter is justified in shooting in self-defense. But if the officer had the right to make the arrest the killing of the officer would be murder although done in the heat of blood.

If the party having authority to arrest or imprison, using the proper means, happens to be killed, it will be murder for all who take part in such resistance. Where after commission of a felony the wrong-doers flee and are overtaken, and the officer points a gun at them and orders them to surrender, if they fire upon and kill him, it is murder.

49. Procedure After Arrest.

When an arrest has been made for violation of the laws or regulations pertaining to the National Forests, the law makes it the duty of the officer to take his prisoner before the nearest United States commissioner or other magistrate under Sec. 1014 of Revised Statutes aforesaid, and to abide by the orders of the magistrate in the premises. The magistrate may admit the prisoner to bail, or he may order him delivered to the United States Marshal, or to jail, to await further proceedings.

The authority to make an arrest imports the authority to incur the expenses necessary to arrest

and secure the prisoner and to convey him before the magistrate. Expenses so incurred are chargeable to the appropriation under which the Forest officer is acting in the administration of the National Forests. Such expenses would include the hire of such help as might be necessary in guarding and in conveying the prisoner. The Forest officer would, therefore, be reimbursed for the transportation of himself and his prisoner and the necessary guards. He would be reimbursed also for the amounts necessary expended by him for subsistence for himself and prisoner. The expense of feeding a prisoner arrested by a Forest officer and turned over for safe keeping to a county sheriff pending a hearing before a magistrate would in the same way be payable out of the Forest Service appropriation. The usual regulations concerning the taking of vouchers would necessarily have to be complied with.

After a hearing before a magistrate, the latter would determine whether the prisoner was to be held for future trial. If admitted to bail or if the evidence be held insufficient, the commissioner would order the release of the prisoner. If not entitled to bail, or unable to give bail, the prisoner would be remanded to the custody of the officer by whom he was brought before the magistrate with instructions to deliver him to the care of some designated jailor or into the custody of the United States Marshal. The Forest officer would be responsible for the safe keeping of the prisoner until so delivered in accordance with the instructions of the commissioner.

As soon as possible after making an arrest, the Forest Supervisor, and by him the District Forester, should be notified of what has been done and full report of the case should be submitted. Likewise, full report of the action of the magistrate and of the course subsequently taken by the Forest officer should be submitted.

50. False Arrest.

Forest officers should exercise particular care in making arrests in all cases since a false arrest renders them personally liable in civil damages.

51. John Doe Warrant.

No such procedure is known to the Federal law, although commonly used under State practice in some jurisdictions. If the person accused of the offense is described sufficiently to permit certain identification by the officer who is commanded to make arrest, then a warrant describing such person with nicety, as by physical characteristics, for example, although not necessarily by name, is not a "John Doe" warrant.

52. Hearing Before Nearest Magistrate.

While a warrant may be obtained from the most convenient Commissioner or other magistrate, if the defendant be found at another place he must be taken before the nearest competent magistrate for hearing.

53. Powers to Arrest Under State Laws.

Forest officers are authorized to arrest for violation of State laws any person found violating any of the provisions of the laws of the State, if they have powers of a State peace officer, as when he is duly commissioned as a State Fire Warden, or deputy sheriff, constable, or other State peace officer; otherwise, not, except in so far as a private citizen may make arrests under State law.

54. Service of Warrants; State Violations.

Warrants may be served by Forest officers having peace powers. Such service is sometimes necessary in the interest of speed, or of efficiency when judicial or police officers are lax or disaf-

fected. But we should remember that we are primarily investigative officers, not police. Constables, sheriffs, etc., are the authorized agents of the courts in serving legal processes, and since their fees result from their performance of this work, not only can our own time and expense be saved, but often better relations with these men be maintained by turning over such service to them, whenever it is feasible.

But don't ask or expect them to work up your case.

After swearing out the complaint it is usual to ask the magistrate when the arrest can be made, and, unless it is already known to the complaining officer, by whom. This enables the Forest officer to keep in touch with the progress of the service.

55. Refusal of Magistrate to Act.

In case a United States commissioner, justice of the peace, or other officer, refuses to issue a warrant when so requested by a Forest officer on valid grounds, or expresses hostility to the enforcement of the fire or other laws we must enforce, fines below the minimum, or otherwise fails to give proper official attention to our cases, the matter should be reported to the District Forester and it will be taken up with the appropriate authorities.

Chapter 4.

UNITED STATES COMMISSIONERS AND COMMITTING MAGISTRATES; FORMS

56. Powers.

A United States commissioner is a judicial officer, and exercises the functions of a committing magistrate, such as a justice of the peace. He has no power to punish for crime against any of the laws of the United States, but

he may issue warrants for the arrest of offenders against the United States and cause them to be imprisoned, or bailed pending trial. He is without jurisdiction to issue a warrant of arrest unless upon proper complaint verified by oath.

The above applies to other magistrates acting under Section 1014 of the Revised Statutes.

57. **Territorial Jurisdiction.**

The jurisdiction of United States commissioners in the states comprising District 4 is the territorial boundaries of the state.

The jurisdiction of justices of the peace and other magistrates who are authorized to act in Federal cases under Section 1014 of the Revised Statutes is usually the county or precinct in which appointed. This can be ascertained locally.

58. **Location.**

According to latest available information, United States Commissioners are located at the following places:

Idaho: Soldier, Roberts, Stites, Dubois, Almo, Cambridge, Preston, Montpelier, Albion, Weiser, Taber, Rupert, Shoshone, Driggs, Malad, Harrison, White Bird, Caldwell, Soda Springs, Paris, Challis, Boise, American Falls, Bonners Ferry, St. Anthony, Desmet, Coeur d' Alene, Thunder City, Meadows, Payette, Patterson, Stanley, Idaho Falls, Plummer, Orofino, Salmon, Mackay, Lewiston, Lovett, Stone, Rexburg, Arco, Twin Falls, Moscow, Leadore, Oakley, Grangeville, Pocatello, Mountain Home, Bancorft, Auburn.

Wyoming: Basin, Evanston, Rocky Point, Marshall, Rawlins, Recluse, Kaycess, Fort Laramie, Afton, Cody, Rock River, Sheridan, Riverton, Dixon, Greybull, Encampment, Guernsey, Cheyenne, Lusk, Glendo, Jay Em, Lovell, Etna, Kemmerer, Worland, Clenrock, Clearmont, Big Trails,

Big Piney, Hilight, Meeteese, Saratoga, Mountainview, Yellowstone National Park, Esterbrook, Moorcroft, Burntfork, Powell, Torrington, Cora, Lingle, Shoshoni, Daniel, Newcastle, Thermopolis, Deaver, Dubois, Casper, Hulett, Upton.

Utah: Grayson, Grouse Creek, Greensboro, Modena, Winder, Milford, Price, Ogden City, Myton, Salt Lake City, Richfield.

Nevada: Fallon, Winnemucca, Elko, Las Vegas, Beatty, Manhattan, Carson City, Battle Mountain, Simpson, Gerlack, Lovelock, Yerington, Austin, Reno, Denio, Vya (Washoe County).

Arizona: Ajo, Douglas, Courtland, Benson, Casa Grande, Sonoita, St. Michaels, Tombstone, Parker, Paradise, Globe, Phoenix, Fort Huachuca, St. Johns, Prescott, Tucson, White River, Fredonia, Holbrook, Clifton, Wilcox, Flagstaff, Nogales, Littlefield, Jerome, Bowie, Payson, Florence, Yuma.

59. **Drafting of Complaint.**

The complaint must charge a specific offense under the statute, or the applicable regulation made pursuant to law, with such particularity as will advise the defendant of the offense alleged. Too great care cannot be taken, since not only the arrest but the case in court will depend upon the sufficiency of the complaint. While, generally, the language of the statute or regulation may be alleged, of course language not applicable to the particular case must be omitted.

Each offense must be charged separately. The union of two incompatible offenses in a single count results in duplicity, which is a ground, upon objection being raised by defendant, for quashing the complaint. However, two consistent allegations may be made; for example, "did set a fire" and "cause a fire to be set" (Crane vs. United States, 162 U. S. 625).

It is a good rule to choose what you can prove and allege it; not to allege everything that by chance might be proved.

COMPLAINTS

60. Form of Complaint If Under Regulation T-1.

United States of America } ss.
District of.....(1) }
City of.....
County of .....

Before me,....., (2)
..... for .....,
at....., personally appeared
this.....day of.....192....,
(3)....., who being first duly sworn, deposes and says, that on or about the .....day of....., A. D. 192....., at....., in the County of ....., State of....., and in said District, (4)..... in violation of the regulations duly made and published as prescribed by the Act of Congress of the United States of June 4, 1897 (30th Statutes at Large, page 11, 35) by the Secretary of the Department of Agriculture of the United States, to wit: Regulation.....(5) of the National Forest Manual, and within the jurisdiction of this Court did then and there wilfully, knowingly, wrongfully and unlawfully

(here allege the act constituting the offense, following the language of the regulation violated; for example, if under Reg. T-1 (A): Set on fire or cause to be set on fire certain timber, brush, and grass, without being authorized by a forest officer so to do.)

upon the.....National Forest, to wit: within Sections....., Township....., Range....., ...Meridian, said Forest being then and there a National Forest of the United States within the State and District of ....., contrary to the form of the statute in such cases made and provided, and

against the peace and dignity of the United States of America.

.....(Deponent's Signature)

Sworn to before me, and subscribed in my presence, this.....day of....., A. D. 192.....

.....(6)

(Seal)

(1) Name of State, as Utah, Idaho, Nevada.
(2) Title of magistrate, as U. S. Commissioner, Justice of the Peace, etc.
(3) Name of complainant, as John Smith, U. S. Forest officer.
(4) Name of defendant.
(5) Regulation violated, as T-1, A, B, C, D, E, F, or G, as the case may be.
(6) Signature and title of magistrate.

61. Form of Complaint If Under Section 52 or Section 53 of the Penal Code.

United States of America } ss.:
District of.....(1) }
City of.....
County of.....

Before me,....., (2)..... for....., at ..... personally appeared this.....day of....., 192....., (3)....., who being first duly sworn, deposes and says, that on or about the.....day of....., A. D. 192....., at....., in the County of....., State of....., and in said District, (4)..... in violation of (Section 52 or 53 as the case may be) of the Penal Code of the United States, Act of March 4, 1909 (35 Stat. 1088) and within the jurisdiction of this Court did then and there wilfully, knowingly, wrongfully and unlawfully, upon the.....National Forest, to wit: within Sections....., Township....., Range ....., ...Meridian, said Forest being then and there a National Forest of

the United States within the State and District of ---,

(here follow the language of the law as far as applicable, as: Set on fire and cause to be set on fire, etc.; or, Fail to totally extinguish a fire, etc.)

contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States of America.

.....(Deponent's Signature)

Sworn to before me, and subscribed in my presence, this.....day of....., A. D. 192.....

.....(5)

(Seal)

(1) Name of State, as Utah, Idaho, Nevada.
(2) Title of magistrate, as U. S. Commissioner, Justice of the Peace, etc.
(3) Name of complainant, as John Smith, U. S. Forest officer.
(4) Name of defendant.
(5) Signature and title of magistrate.

62. **Warrant of Arrest.**

The President of the United States of America, to the Marshal of the United States for the District of.....
(Utah, Nevada, Idaho, as the case may be), and to his deputies, or any of either of them, or to any United States Forest officer.

WHEREAS,.....has made complaint in writing under oath before me, the undersigned, a.....(magistrate's title), for.....(State, District, County), charging that.....(Defendant), late of .....County, in the State of....., did at....., within the jurisdiction of this Court, on or about the.....day of.....A. D. 192....., in said District and State, in violation of the (here as in complaint) then and there wilfully, knowingly, wrongfully and unlawfully and without any right or permit therefor (here as in complaint) contrary to the form of the statute in such cases made and provided and against the peace and dig-

nity of the United States of America.

NOW, THEREFORE, YOU ARE HEREBY COMMANDED, in the name of the President of the United States of America, to apprehend the said....., wherever found in your District, and bring his body forthwith before me or other magistrate having jurisdiction of said matter, to answer the said complaint, that he may then and there be dealt with according to law for the said offense.

Given under my hand and seal this.....day of....., A. D. 192.....

.....(Name and Title of Magistrate).

(Seal)

63. Return of Warrant of Arrest.

Received this warrant on the.....day of ....., 192....., at....., and executed the same by arresting the within named..... at....., on the.....day of....., 192....., and have .....h.....bod.....now in court, as within I am commanded.

.....(U. S. Marshal.)

.....District of.....

Per.....

.....(Deputy or U. S. Forest Officer)

.....day of....., 192.....

NOTE: It should be borne in mind that no form can be prescribed in advance which will fit **in every detail** a given case. The forms of complaint and warrant above are intended as general guides only, and of necessity must be modified to fit particular cases. However, no material portion may be omitted without endangering a resulting fatal omission or defect.

Chapter 5

THE TRIAL

64. Preparing the Material.

When all possible or necessary evidence in a case has been run down and the necessary wit-

nesses provided for, with a definite understanding of just what each will testify to, all these facts in the case must be put into systematic and workable shape.

65. The Working Memorandum.

For the purpose of the case in court a somewhat different organization of the material will be desirable, for which approximately the same form will apply, whether it be prepared for conduct of the case by the Forest officer, which he will doubtless be called upon to do in many justice's cases involving no legal difficulties, or as a memorandum for the District Law Officer in more important or difficult cases.

Several persons may be prosecuted together for the same fire, or any one alone. Separate fires, especially if on separate days, should be reserved for separate cases, so as not to have used up all our ammunition if the defendant is unexpectedly acquitted on the first one.

66. The Main Case.

Arrange the material so that it tells the story in chronological order. Confine the main case to the material essential to a clear and complete chain of evidence. This gains the advantage of clearness of impression on the jury; too great a mass of evidence may muddle the main issue in their minds. Any additional material should be carefully worked up with a view to its use in rebuttal, or in connection with surprise defenses, as discussed below.

Have your record perfectly clear as to exactly what part of the chain the testimony of each witness and each piece of documentary evidence will cover, and just what link each exhibit will support. Avoid repetition as far as possible. Whenever it is necessary to mention again something already related, simply refer to it with the page on which it first occurs. If your record is to be used as a memorandum for the District Law

Officer, the reviewer, if without other knowledge of the case, may otherwise have difficulty to determine whether such a rehashed incident is a new occurrence or one previously related.

67. Rebuttal, Etc.

Here, one should anticipate what defenses may be set up and provide in advance for meeting them. The defendant will usually try to introduce testimony contradicting the testimony of the prosecution; but he may put in evidence unexpected facts tending to explain away or otherwise refute the evidence of the prosecution. The cross-examination offers the first opportunity of nullifying such evidence; if this cannot be accomplished here, the prosecution may need new testimony to impeach the credit of the defendant's witnesses.

68. Appendix.

A list of the witnesses, with brief notation of the exact facts to which each will testify, together with all documentary evidence and a list of exhibits, should be collected in an appendix, each separate item being designated by letter, as, for example, "Exhibit A." At the appropriate points in the narrative record, these documents, etc., should then be referred to only by exhibit designation. This helps both in completeness and in keeping the narrative clear.

69. Outline.

A good outline on which to get material together is the following:

The offense—what, where, when, how, by whom, why (motive).

Information.

Rumors.

Clues.

Main evidence—the facts, in order, with names

of witnesses who will testify to them, as shown in detail in appendix at end of report.

Evidence available for rebuttal, or to meet possible surprise defenses.

Appendix—as above.

70. **Use of Maps.**

The Trespass Map. The trespass map must show completely the facts of trespass, and damage suffered. It should include, therefore, land section, township and range, boundaries between National Forest and other lands, drainage, roads, houses, and culture bearing on the case, area covered by the trespass, and, in case of fire, its origin with respect to Forest land boundaries; cover species or type, and size of timber, and nature and extent of damage. The investigator should not be required to make this map, if it can be done by others, as rangers in charge of suppression. When necessary on account of close questions of boundary, the District Forester will send an expert surveyor to make transit surveys.

70a. **The Court Map.** The map to be presented in court should be on a large enough scale to be legible when hung up so that the jury can all see it at once, since it is much more effective when used in this way. It should be confined to the data essential for the purpose, but it should show this with the utmost clearness. Its legend should also give its "approximate scale" and, if angles of view are material, a statement that these are correct. Every care should then be used to see that they are correct. Any "trespass" or other designation on the original, to which the defense could object as tending to prejudice the jury in advance, must be carefully omitted.

As to land boundaries, the proclamation diagrams of the National Forests can always be found in the biennial volume of the U. S. Statutes at Large, covering the year in which they were

issued. Private land boundaries can be obtained from Forest Service status, and verified and certified by the U. S. Land Office if desired.

71. **Planning the Case.**

When the case in court is to be conducted by the Forest officer, he will need also to plan in as much detail as possible every item in the procedure. This plan may of course be upset by unexpected moves on the part of the defense; but a plan definitely made in advance is the only basis of success. Such a plan can be changed to meet exigencies; but only wandering, and oversight of critical needs, can result from leaving each step to be planned as you go.

The plan should include:

Scrutiny of possible jurors, and of any whom you should try to remove by challenge, if any advance line on the panel is possible.

Preparation of prosecution statement of the case. If the accused is to plead guilty this will be used as a statement of the circumstances of the case, for which the justice generally asks, to guide his sentence. If the latter does not do so, the prosecution should ask permission to make such a statement, unless it is reasonably certain that the court is already cognizant of, and sufficiently impressed by, all the essential features of the case. If leniency is recommended, on account of a confession, or of extenuating circumstances, minimum sentence should usually be asked. Reserve suspended sentence request for very special merit; too many of these are dangerous.

If a jury trial will be necessary, one must also plan:

The exact order in which his witnesses should be called in building up the main case, and the questions which he will ask each one. When this is worked out in the rough, the whole should be studied in the light of the law of evidence so that mistakes may be avoided.

In connection with what can be learned of the probable defense of the accused, who his witnesses will be and what they will testify to, your line of cross-examination must be worked out for each of his witnesses, in order to make the testimony accomplish as little for the defense and as much for the prosecution as possible.

Your own witnesses and their evidence in rebuttal, or for the purpose of impeaching witnesses for the defense, or of counteracting surprise defenses.

Every care should be taken not to let the defense get knowledge of your plan.

72. County Attorney — Cooperation — in State Cases.

Generally speaking, the county prosecuting attorney represents the state in all criminal prosecutions in the county. There are times, however, when it is impossible or very inconvenient for the county attorney to appear for the state in trials before justice courts or county courts. It is not absolutely necessary for the county attorney to attend, and in his absence the justice court, police court, or the county court can proceed in any case within its jurisdiction to a preliminary hearing or a trial as the case may be. Under circumstances of this kind, a National Forest officer may assist, under the direction of the justice, to bring out the facts tending to show that the accused has committed a crime against the state. It is always advisable, though, to seek the assistance of the county attorney in all criminal trials in justice or county courts.

Chapter 6

PROCEDURE AND REPORTS

"First catch your hare and then cook it."

73. Settlement; How Made.

This subject logically concludes the discussion.

For until there shall have been a fire, an investigation, a gathering of evidence, an arrest, a presentation of the case, and judgment, there is nothing in particular to report, unless some serious difficulty is encountered along the way.

The National Forest Manual in considerable detail sets forth the procedure to be followed. Only a few important points will be here considered.

Trespass may be settled in three ways.

1. Innocent or unintentional, by the offender paying the amount of actual damages resulting from the trespass.

2. Wilful or intentional, by the offender paying actual damages and an exemplary or punitive damage.

3. Aggravated wilful or intentional trespass, in which criminal prosecution is resorted to, in which case settlement of actual civil damages, in addition, depending on the circumstances, may or may not be required.

In the case of fire, criminal action should be the rule, civil procedure the exception. In unintentional cases the fine may be nominal. The effect upon the trespasser and the community is not what is desired in fire cases where civil action rather than criminal is resorted to.

74. Outline for Report.

Full report should be submitted on every man-caused fire. Use trespass outline, as given below.

1. Full Name:

Address, occupation, reputation and financial standing and responsibility of the trespasser.

2. Synopsis of Case:

Describe briefly the act or acts constituting trespass, giving date of trespass, or dates of beginning and termination, location by legal subdivisions (approximate if unsurveyed), county, local land marks; its status. Give acreage of National Forest land burned over, and amount and value of mature and immature timber damaged.

3. Detailed Description of Trespass:

(1) Give day and hour Forest officer first arrived at the fire, and extent and condition of fire at that

time; (2) what action was taken by Forest officer on arrival; (3) give detailed description of point of origin of fire; nature and condition of inflammable material at or near the point of origin of fire; (4) if origin was outside Forest, distance from point of origin to the National Forest land, and quantity, kind, and condition of inflammable material on land between; (5) what evidence or clues found indicating cause of fire, including any circumstantial evidence on the ground, such as horse, vehicle, or man tracks, etc.; (6) if fire escaped from control, had it been left unattended, or if attended constantly, by whom, and how did it escape; what precautions, if any, had been taken to prevent escape, such as clearing around camp fire, plowing, back-fires, etc.; (7) who, if any one, was at the fire when the first Forest officer arrived, and what efforts were being made to extinguish the fire; whereabouts of trespasser during the fire; (8) velocity and direction of the wind and other weather conditions, (8a) immediately preceding the fire, (8b) at the time the fire started, and (8c) during the fire; (9) brief account of suppression of fire, with dates fire lines closed, patrol removed, and of extinguishment of embers by rain or otherwise; (10) statements, if any, made by trespasser relative to the origin or escape of the fire; (11) all other facts obtainable tending to show trespasser's responsibility for fire and whether it escaped through his negligence; (12) topography of country burned over; (13) if private, State, or unreserved public lands were burned over, give approximate area and location with respect to the National Forest; (14) whether trespasser has settled for damage to private or State lands. (15) If fire was caused by railroad train, give number of train and locomotive and direction traveling; hour it passed point of origin of fire; grade of track at that point; condition of right of way at and near point of origin; whether railroad officials had been notified of the dangerous condition of the right of way, and if so, when, how, and by whom; what response made to such notice; distance of the starting point of the fire from the track; whether any fire was seen on or near right of way before train passed; if so, when, where, and by whom; how soon after train passed was fire seen; kind of fuel used in locomotive; condition of spark arrester, or lack of one; whether same or other engines of company have been seen emitting sparks within a short time prior to or after the fire; if so, when, where, and by whom; names and addresses of members of train crew, if possible; assistance given by railroad employees in extinguishing fire.

4. **Circumstances of Trespass.**

Facts showing whether the trespass was committed innocently or wilfully; previous trespass record of the trespasser; warning given before trespass was committed; kind and distance apart of boundary marks at or near point of trespass; other precautions taken by the Forest Service to prevent trespass. Describe lands owned by trespasser affecting the trespass case. If the trespass was connected with any authorized use of the Forest, furnish copy of permit or contract. Any extenuating circumstances. State whether trespasser acted with the knowledge, consent, or approval of a Forest officer. Admissions

or denials of responsibility for the trespass by the trespasser or his agents. All other pertinent facts in the situation, who investigated trespass, threats to commit trespass, etc.; probable defense of trespasser, names and reputations of witnesses he may call, etc.

5. **Witnesses.**

In every case, the report should contain the full names and addresses of the witnesses, by whom each material fact alleged in the report can be proved, with a brief but clear synopsis of the particular facts within the knowledge of each. An affidavit should be secured from each witness whenever possible, setting out clearly the particular fact of the case within his knowledge. If there are any witnesses who decline to make a statement, a brief synopsis of the facts to which it is believed they can testify should be submitted. The reporting officer should also indicate the facts that are peculiarly within his knowledge.

6. **Damages.**

In all cases, describe and give amount of the total damage caused by the trespass, including damage to improvements, if any, and the method of determining damage. Give the total amount, by species and classes of (1) the nature of merchantable timber (a) slightly injured, (b) killed, (c) totally destroyed by the fire; (2) the acreage of young growth (a) slightly injured, (b) totally destroyed or killed, etc.; (3) give prevailing local market value on stump prior to the fire of the various species and classes of merchantable timber (a) slightly injured, (b) killed, (c) totally destroyed; (4) market value after the fire of the mature timber (a) injured and (b) killed; (5) amount of injured and killed timber, if any, sold since the fire, when and to whom sold, and price received; (6) an estimate of the value of the young growth, or reproduction (a) injured, and manner of computing such value, (b) killed or totally destroyed; (7) cost of fighting the fire, giving salaries and expenses of Forest officers separately from other costs; (8) damage, if any, to forage.

7. **Action.**

(1) Forest officers conducting and assisting in the investigations.
(2) Dates commenced and finished.
(3) Brief summary of work done and results to date.
(4) If an arrest has been made, state in detail the necessity for such arrest and all the circumstances relating thereto.
(5) If case has been closed explain results secured. In this event "8—Recommendations" below can be omitted.

8. **Recommendations.**

Recommend definitely, with reason, whether the case should be settled by the collection of damages only, or whether criminal prosecution is warranted. If criminal prosecution is not warranted, recommend, in other than timber trespass cases, whether puni-

tive damages should be demanded in addition to actual damages on account of the wantonness of the case, and if so, give amount of punitive damages which would be reasonable under the circumstances. If trespasser has offered to settle, whether the terms offered should be accepted. If prosecution is recommended, should action be under State or Federal laws?

9. **Map.**

Maps showing area trespassed upon must be submitted with each copy of the report, to be on a sufficiently large scale to show outline of trespass area, title of land, character of surrounding timber, roads, trails, streams, houses, point at which trespass started, and any other information that will tend to show graphically the damage done, or aid in giving a correct understanding of the case.

Directions for Use of Outline.

Follow the arrangement and numbering of major headings, Nos. 1 to 8, as given on the form. Disregard the minor headings not applicable to the case, and add any other pertinent information. Do not number minor headings. The heading "Detailed Description of Trespass" is designed to secure a statement of the physical conditions found in connection with the trespass. The headings, "Circumstances of Trespass" and "Witnesses" are intended to develop the evidence of the case and establish the fact of trespass. Since these headings develop considerable detail, it is essential to preface the report with a brief synopsis of the case to enable the reviewing officer to follow the subsequent statement.

75. **State or Federal Court.**

Whether to take cases after an arrest before the local Justice of the Peace under the State procedure, or to bring an offender before a United States Commissioner (or a State magistrate under Federal procedure by virtue of Section 1014 of the Revised Statutes), is a question which will depend upon the circumstances.

It is well known that the average citizen has a greater awe of the Federal Government and its power to reach offenders and mete out justice than he does of the judicial processes of his own or another or neighboring State. True it is that procedure under the Federal law is often accompanied by considerable delay. But it is believed in the average case the effect which a proceeding under the Federal law will have upon the offender as well as the interest which Federal cases receive in the community will off-set other disadvantages.

If an offender be taken before the local Justice of the Peace in his capacity as a State officer, justice can be dealt out on the spot. The fine, if found guilty, can be paid and the case closed. This, however, is the only advantage of State procedure, because so often local and other conflicting interests intervene with the result that substantial fines under the State law are the exception and not the rule.

While it is true, as stated elsewhere herein, that United States Commissioners (and State magistrates, acting under Federal authority pursuant to Section 1014 of the Revised Statutes) are not authorized to impose a fine, but must bind the offender over for further action by the Federal Court, yet there is a procedure (and it is to this that attention is particularly directed) whereby, under Federal procedure in all but very exceptional cases, prompt settlement may be had.

After an offender has been taken before the United States Commissioner or other magistrate under Federal law and bound over for action by the Federal Court, of course, he must give bond for his appearance at the trial. The Court usually sits at some considerable distance from the scene of the offense and the offender must either forfeit his bond, which ordinarily is in a substantial sum, or proceed to Court, hire an attorney, etc. Even if defendant forfeits his bond by not appearing he may be arrested and brought in for trial if the case is such as to require this additional action.

Given a defendant who has been placed under bond and knows that he is to be at considerable expense in making his defense in the Federal Court, it would not be a difficult matter for Forest officers in most cases to accomplish a prompt settlement in the following manner. Defendant could be told that after arrest and giving of bond, the case is entirely in the hands of the Department of Justice; that in the case of misdemeanors, it is the custom of United States attorneys, where de-

fendants prefer not to stand trial, to permit them to tender to the Court the payment of an agreed fine. Defendant could then take up with the United States attorney the matter of a voluntary settlement. The District Office, in the meantime having been advised of the amount of damage done by the fire and having the recommendations of the Supervisor as to the amount of fine which would be satisfactory, would communicate with the District Attorney the wishes of the Forest Service in the premises. During this time defendant would be under bond and if no satisfactory, voluntary settlement were had he would have to stand trial.

If the violation be of Sec. 52 of the Penal Code, which is a felony, the above is not applicable, as compromise may not be made of felonies, but only of misdemeanors.

No rule applicable in all cases can be laid down as to whether procedure should be under the State or Federal law. Forest officers on the ground will best be able to judge in the particular case which course to follow, bearing in mind the general suggestions above made.

76. Conclusion.

This is a day and generation of specialization. A Forest officer is not expected to be at once a detective, lawyer, jailer, court, and hangman. In a given case, if need be felt for the help of one who has specialized in Law Enforcement, no hesitation should be felt in making application for aid. Likewise, the District Law Officer will be glad, upon reasonable notice, to be on hand in any case which the local officers feel they cannot alone handle to a satisfactory conclusion.

MIMEOGRAGH ADDITIONS

76a. Increased experience in law enforcement is bound to teach us new ideas. Every one engaged in the work must contribute to the good of all by sending in such ideas and suggestions. These will be mimeographed and sent to all those using these instructions.

PART II

Chapter 1.

FEDERAL FIRE LAWS

United States Criminal Code—35 Stat. 1088.

77. Section 52. Whoever shall wilfully set on fire, or cause to be set on fire, any timber, underbrush, or grass upon the public domain, or shall leave or suffer fire to burn unattended near any timber or other inflammable material, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

78. Sec. 53. Whoever shall build a fire in or near any forest, timber, or other inflammable material upon the public domain shall, before leaving said fire, totally extinguish the same; and whoever shall fail to do so shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

79. Sec. 54. In all cases arising under the two preceding sections the fines collected shall be paid into the public school fund of the county in which the lands where the offense was committed are situated.

80. Sec. 335. All offenses which may be punished by death, or imprisonment for a term exceeding one year, shall be deemed felonies. All other offenses shall be deemed misdemeanors.

NOTE: Thus it will be noted that an offense under Section 52 is a felony, while one under Section 53 is a misdemeanor merely.

81. **Interpretation of Federal Law.**

The offenses of setting fire to timber, etc., on the public domain, may be accomplished even if the fire is started on adjoining private land. (United States v. Henry Clay.)

The word "wilful" in Section 52 above quoted, means not necessarily with malice, but merely "intentional." (United States v. Fisher.)

Chapter 2.

REGULATIONS OF THE SECRETARY OF AGRICULTURE

82. **T-1.** The following acts are prohibited on lands of the United States within National Forests:

(A) Setting on fire or causing to be set on fire any timber, brush, or grass, except as authorized by a forest officer.

(B) Building a camp fire in leaves, rotten wood, or other places where it is likely to spread, or against large or hollow logs or stumps, where it is difficult to extinguish it completely.

(C) Building a camp fire in a dangerous place, or during windy weather, without confining it to holes or cleared spaces from which all vegetable matter has been removed.

(D) Leaving a camp fire without completely extinguishing it.

(E) Building a camp fire on those portions of any National Forest which have, with the approval of the district forester, been designated by the respective supervisors thereof without first obtaining a permit from a forest officer.

(F) Using steam engines or steam locomotives in operations on National Forest lands under any timber-sale contract or under any permit, unless they are equipped with such spark arresters as shall be approved by the forest supervisor, or unless oil is used exclusively for fuel.

(G) Disturbing, molesting, interfering with by intimidation, threats, assault, or otherwise, any person engaged in the protection and preservation of the Forests from destruction, including fire fighting, cutting and removing dead, insect-infested, or diseased timber, clearing the land of

inflammable material of any kind, or doing, or making preparation to do, these or other acts necessary for the protection and preservation of a National Forest.

83. **T-2.** Hereafter, provided Congress shall make the necessary appropriation or authorize the payment thereof, the Department of Agriculture will pay the following rewards:

First. Not exceeding $500 and not less than $100 for information leading to the arrest and conviction of any person, in any United States court, on the charge of wilfully and maliciously setting on fire, or causing to be set on fire, any timber, underbrush, or grass upon the lands of the United States within a National Forest.

Second. Not exceeding $300 and not less than $25 for information leading to the arrest and conviction of any person, in any United States court, on the charge of building a fire on lands of the United States within a National Forest, in or near any forest timber or other inflammable material, and leaving said fire before the same has been totally extinguished.

Third. All officers and employees of the Department of Agriculture are barred from receiving reward for information leading to the arrest and conviction of any person or persons committing either of the above offenses.

Fourth. The Department of Agriculture reserves the right to refuse payment of any claim for reward when, in its opinion, there has been collusion or improper methods have been used to secure the arrest and conviction thereunder, and to allow only one reward where several persons have been convicted of the same offense or where one person has been convicted of several offenses, unless the circumstances entitle the claimant to a reward on each such conviction.

These rewards will be paid to the person or persons giving the information leading to such

arrests and convictions upon presentation to the Department of Agriculture of satisfactory documentary evidence thereof, subject to the necessary appropriation, as aforesaid, or otherwise, as may be provided by law.

Applications for reward, made in pursuance of this notice, should be forwarded to the Forester, Washington, D. C.; but a claim will not be entertained unless presented within three months from the date of conviction of an offender.

In order that all claimants for reward may have an opportunity to present their claims within the prescribed limit, the department will not take action for three months from date of conviction of an offender.

NOTE: A crime against a State fire law may or may not be a crime under the Federal laws. Nor is a crime against the Federal law necessarily a crime against the State. Forest officers should carefully study the provisions of each law to determine this point.

Chapter 3.

MISCELLANEOUS FEDERAL LAWS

Forest Service officials to aid in enforcement of local laws relating to stock, prevention and extinguishment of forest fires, and protection of fish and game, and with respect to national forests, to aid other Federal bureaus and departments. * * *

84. **Act of May 23, 1908—35 Stat. 259.**

"Hereafter officials of the Forest Service designated by the Secretary of Agriculture shall, in all ways that are practicable, aid in the enforcement of the laws of the States or Territories with regard to stock, for the prevention and extinguishment of forest fires, and for the protection of fish and game, and with respect to National Forests, shall aid the other Federal bureaus and departments on request from them, in the performance of the duties imposed on them by law; * * *"

This is a provision of the agricultural appropria-

tion act for the fiscal year 1909, cited above. Previous similar provisions for aiding in the enforcement of the laws of the States or Territories, without the word "hereafter," are superseded by the provision set forth above.

86. **United States Criminal Code—35 Stat. 1088.**

Section 125. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall wilfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

Section 31. Whoever, being an officer authorized to administer oaths or to take and certify acknowledgments, shall knowingly make any false acknowledgment, certificate, or statement concerning the appearance before him or the taking of an oath or affirmation by any person with respect to any proposal, contract, bond, undertaking, or other matter, submitted to, made with, or taken on behalf of, the United States, and concerning which an oath or affirmation is required by law or regulation made in pursuance of law, or with respect to the financial standing of any principal, surety, or other party to any such proposal, contract, bond, undertaking, or other instrument, shall be fined not more than two thousand dollars, or imprisoned not more than two years, or both.

87. **The Law of 1897—upon which Reg. T-1 is based.**

The Secretary of Agriculture shall make provisions for the protection * * * upon * * *

the public forests, * * * and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, **to regulate their occupancy and use** and to preserve the forests thereon from destruction; and any violation of the provisions of this act **or such rules and regulations** shall be punished as is provided for in the Act of June 4, 1888. (Act of June 4, 1897, 30 U. S. Stat. 11, 35; Act of Feb. 1, 1905, 33 Stat., 628.)

The Act of June 4, 1888, above referred to, provides that any person who violates the act shall pay a fine of not more than five hundred dollars or be imprisoned not more than twelve months, or both, in the discretion of the Court (25 Stat. 166).

Chapter 4.

STATE FIRE LAWS

IDAHO

FIRE TRESPASS

88. **Idaho Compiled Statutes of 1919.**

Section 2941. **Fire Districts and Fire Wardens.** The state board of land commissioners of the state of Idaho shall divide the state into districts to be known and designated as fire districts, having due regard in establishing the boundaries thereof to the area of forests or timber lands therein; they shall appoint, upon the application of any owners of land or other property within the state, one fire warden within each of the districts of the state, and such fire wardens, so appointed, shall be paid by said property owners applying for the appointment of the same, and shall in no case be paid by the state, except as hereinafter provided. All such appointments shall be made for one year, unless sooner revoked, and the state board of land commissioners may at any

time revoke any such appointment, upon good cause shown.

The fire wardens, so appointed, shall appoint, as deputy fire wardens, within their respective districts, such persons as shall be designated by such owners of land or other property, who shall also be paid by the person or persons securing their appointment. Their employment shall not be for any definite time, and they shall be discharged immediately by the fire wardens of their district upon the request of such person or persons at whose instance they were appointed.

The fire wardens and deputy fire wardens shall have and exercise police powers while engaged in performing the duties of their respective offices; Provided, That the state board of land commissioners shall prepare an abstract of the penal laws relating to forest and prairie fires, together with proper regulations and suggestions for the prevention and control thereof, and before April 1 in each year shall forward printed copies to all fire wardens, railroad companies and chairmen of county boards. The wardens shall post such abstract in numerous conspicuous places in their respective districts.

89. Section 2942. **Duties of Fire Wardens.**

The fire wardens shall enforce the provisions of this chapter. They and the deputy fire wardens shall patrol their districts in dry seasons. They shall promptly investigate each prairie and forest fire within their respective districts. Each fire warden shall make an annual report to the state board of land commissioners of the fires within his respective district, together with the cause thereof, the property destroyed and its value, the lives lost, if any, and the means used to combat such fire, and any additional facts required by the state board. Each warden shall cooperate with the warden in the adjoining district, and, in his absence, assume control therein. Each may arrest,

without warrant, any person found violating any provisions of this chapter, and take him before a magistrate and there make complaint; and, when a warden shall have information that such violation has been committed, he shall make similar complaint. Wardens shall go to the place of danger to control or prevent fires, and, in emergencies, may employ or compel assistance, and the compensation for such services compelled shall not exceed $2.50 per day, exclusive of subsistence and reasonable traveling expenses.

90. Section 2943. **Burning Brush and Waste; Penalty for Violation.**

Any person, firm or corporation engaged in the cutting and removing of timber, logs, ties, telegraph poles, wood, or other forest products from lands within the state of Idaho shall pile and burn or otherwise dispose of the brush, limbs, tops, and other waste material incident to such cutting, which are 4 inches or under in diameter, and the times and methods of so doing shall be prescribed by the warden of the fire districts in which said cutting shall be done. Any person, firm or corporation violating the provisions of this section, or refusing to conform to any rules made by the warden of any fire district of the state of Idaho relative to the time, place, and manner of burning or disposing of brush, limbs, tops and other waste material incident to the cutting of timber, logs, ties, telegraph poles, wood, or other products, shall be guilty of a misdemeanor, and upon conviction thereof be subject to a fine of not less than $100 nor more than $500, or be imprisoned in the county jail of the county in which the offense occurs for not less than 30 days and not to exceed six months, or be subjected to both such fine and imprisonment.

91. Section 2944. **Permit to Set Out Fires.**

It shall be the duty of the fire wardens of each

fire district to issue written or printed permits during permit season, to any and all persons named in an application to set out fires. Said application shall state the general description of the land upon which it is desired to set out fires and the extent of the slashing or burning desired to be burned. Said permit season shall be from June 1 to October 1 of each year. Said permits shall fix the time for setting out fires on any three consecutive days therein named, and not less than ten days from date of such permit, and such fires shall be set at no time when the wind is blowing to such an extent as to cause danger of the same getting beyond the control of the person setting out said fire, or without sufficient help present to control the same, and the said fire shall be watched by the person setting out the fire until the same is out. Upon granting said permit the fire warden shall be present at said proposed burning, or notify, at the earliest possible moment, some qualified and acting deputy fire warden in the vicinity of said proposed burning to be present thereat, and upon good cause may revoke or postpone said permit upon notice to said applicant.

92. Section 2945. **Engines to Use Spark Arresters.**

It shall be unlawful for any person, firm, or corporation to use any spark emitting locomotive, logging engine, portable engine, traction engine, or stationary engine located in a timber district, without the use of a good and efficient spark arrester. Any person, firm or corporation who shall fail to provide and use such spark arrester upon any engine shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than $25 nor more than $100 for each day that such engine or locomotive is so used.

93. Section 2946. **Violation of Chapter a Misdemeanor.**

Every warden or deputy warden and every per-

son lawfully commanded to assist in enforcing any of the provisions of this chapter, who shall unjustifiably refuse or neglect to perform his duty; every person who shall kindle a fire on or near to forest or prairie land and leave it unextinguished, or be a party thereto; every person who shall use other than incombustible wads for firearms, or carry a naked torch, firebrand, or exposed light in or near to forest land; and every person who shall deface, destroy, or remove any abstract or notice posted under this chapter, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $10 nor more than $100.

94. Section 2947. **Closed Season for Fires.**

The period from June 1 to October 1 in each year shall be known as the closed season, during which time it shall be unlawful for any camper, farmer, logger, or other individual, firm or corporation, to set out or cause to be set out, fires in slashings, down or fallen timber, or on timber lands or in the vicinity of grain fields, for the purpose of clearing land or brush, grass or other inflammable material without first obtaining a permit in writing, or print, from the fire warden of the district as provided in Section 2944, and at no time shall any fire be set out when the wind is blowing to such an extent as to cause danger of the same getting beyond the control of the person setting out such fire, or without sufficient help present to control the same; and the same shall be watched by the person setting the fire until the same is out. Any person violating any of the provisions of this section shall be punished by a fine of not less than $100 nor more than $300, or by imprisonment in the county jail not less than one month nor more than six months: Provided, That this section shall not apply to any person or persons setting out back fires for the purpose of stopping or checking a fire then burn-

ing. The fire warden shall keep a complete copy of permits issued.

95. Section 2948. **Care of Railroad Right of Way**

Every person, firm or corporation operating a railroad shall keep the ground for 50 feet on each side of the center of the track, or such portion thereof as may be owned or controlled by such person, firm or corporation, clear of combustible materials, except ties and other materials necessary for the maintenance and operation of the road, from June 1 to October 1 of each year. No person, firm or corporation shall permit any of his or its employees to leave a deposit of fire, live coals, or ashes in the immediate vicinity of woodland or lands liable to be overrun by fire and every engineer, conductor, trainman, or section man discovering fire adjacent to the track shall report the same promptly at the first telegraph or telephone station reached by him. At the beginning of the closed season every such person, firm or corporation shall give his or its employees particular instructions for the prevention and extinguishment of fires, and shall cause warning placards to be conspicuously posted at every station within this state, and when a fire occurs near the line of his or its road, shall concentrate such help and adopt such measures as shall be available for its extinguishment. Any person, firm or corporation violating any provisions of this section shall be guilty of a misdemeanor and shall be subjected to a penalty of not more than $100 for each offense, and any railroad employee violating the same shall be guilty of a misdemeanor and shall be punished by a fine of not less than $5 nor more than $50.

96. Section 2949. **Officers Charged with Enforcement of Law.**

The state land commissioner and his assistants, or land appraiser and selectors, game wardens and

their deputies, and all peace officers of the state, are hereby charged with the enforcement of this chapter, and shall have full power to arrest violators of the provisions of this chapter, and deliver them to the nearest magistrate to be dealt with according to law; and it is hereby made the duty of such officers having a knowledge of any violation of the provisions of this chapter, to file complaint in a court of competent jurisdiction against such person.

97. Section 2950. **Cooperative Fire Prevention.**

The state board of land commissioners of the state of Idaho shall in all things cooperate with the owners of land, timber, or other property in this state in carrying out the provisions and purposes of this chapter, and the state of Idaho shall bear and pay its proper pro rata share of the costs and expenses of protecting the lands and timber in the state against destruction by fire incurred under the provisions of this chapter according to the area and extent of its land and timber holdings throughout the several fire districts of the state, and the state of Idaho shall be considered an owner of land or other property within the meaning of that term as used in this chapter, for the purpose of this chapter. Such moneys as the state shall thus become liable for shall be paid as part of the general expenses of the state board of land commissioners and out of the appropriations which shall be made by the legislature for that purpose; and in all appropriations hereafter made for general expenses of said board account shall be taken of and provision made for this item of expense.

98. Section 2951. **Disposition of Fines; Informer's Share.**

All fines collected for violations of this chapter, or any provisions thereof, shall be disposed of and

paid as follows, to-wit: Half to the general fund of the county where the conviction is had and half to the person or persons furnishing the information leading to the arrest and conviction of the person, firm or corporation convicted.

99. Section 3458. **Notice Concerning Camp Fires.**

It is the duty of the board of county commissioners of each county in this state to cause to be erected in a conspicuous place at the side of each public highway, and at such places as they may deem proper, a notice in large letters, substantially as follows:

Camp fires must be totally extinguished before breaking camp, under penalty of not to exceed six months imprisonment, or $300 fine, or both, as provided by law.

(Signed).....(County Commissioner)

The erection and maintenance of such notices shall be at the expense of the respective counties, and at least 10 in number of such notices shall be posted in each and every county in this state.

100. Section 8346. **Firing Timber or Prairie Lands.**

Any person who shall wilfully or carelessly set on fire, or cause to be set on fire, any timber or prairie lands in this state, thereby destroying the timber, grass, or grain on any such lands, or any person who shall build a camp fire in any woods, or on any prairie, and leave the same without totally extinguishing such fire, or any railway company which shall permit any fire to spread from its right of way to the adjoining lands, is guilty of a misdemeanor.

WYOMING

101. Section 5817 (Wyo. C. S., 1910). **Burning Woods and Prairies**

Whoever maliciously or wantonly sets fire to any woods, or to anything growing or being upon

any prairies or grounds, not his own property; or maliciously or wantonly permits any fire to pass from his own prairie or grounds to the injury or destruction of any property not his own, shall be fined not more than one hundred dollars, to which may be added imprisonment in the county jail not exceeding thirty days.

102. Section 5818. **Failure to Extinguish Fires.**

Any person or persons who shall light a fire, for any purpose in any woods or on any prairie in this state and who shall leave the vicinity of such fire without extinguishing the same shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine, not less than ten dollars and not exceeding one hundred dollars, or by imprisonment in the county jail not less than ten days and not exceeding thirty days, or by both such fine and imprisonment.

103. Section 4203. (Wyo. C. S. 1910). **Railroad to Burn Fire Guards.**

It shall be the duty of every railroad corporation operating its line of road, or any part thereof, within this state, between the first day of September and the first day of November of each and every year, upon its right of way upon each side of its road bed, to burn as a fire-guard all grass and vegetation growing upon its said right of way running parallel with the line of said road, and said right of way shall be burned in such good, workmanlike manner, and to prevent said fire from spreading to lands adjacent to said right of way, as to effectually destroy the grass and vegetation thereon; Provided, That the right of way so burned shall not exceed a strip of land over two hundred feet in width upon each side of the said railroad; and, Provided, further, That such fire-guard need not be burned within the

limits of any village or city, nor along that portion of the line of a railroad where the desert or mountainous character of the adjoining land would render such burning impracticable or unnecessary.

104. Section 4204. **Penalty for Failing to Burn Fire-Guards.**

Any railroad corporation failing to comply with the provisions of the preceding section shall be liable to pay a penalty of one hundred dollars for each and every mile, or fractional part thereof, of such strip of land as it neglects to burn upon either side of the line of its road in this state, in each and every year as aforesaid, the same to be collected in any proper action in any court of competent jurisdiction, in the name of the state of Wyoming, and when collected it shall be paid into the school fund of the county wherein the cause of action accrued; and, Provided, That the said action shall be brought within one year next after it occurs.

105. Section 4205. **Railroads Liable for Damage by Fire When No Fire-Guards Burned.**

Every railroad corporation operating its line of road, or any part thereof, within this state, shall be liable for all damages by fire, that is set out, resulting or caused by operating any such line of road, or any part thereof, when such railroad company has failed to burn a fire-guard as provided in Section 4203, and any such damages may be recovered by the party damaged, by a proper action in any court of competent jurisdiction; Provided, That said action be brought by the party injured within one year next after said damage shall have been inflicted or caused.

106. Section 8389. **Burning Property Not the Subject of Arson.**

Every person who wilfully and maliciously burns any bridge, or any building, snowshed, or vessel, not the subject of arson, or any stack of grain of any kind, or of hay, or any growing or standing grain, grass, or tree, or any fence, not the property of such person, and exceeding in value $50, is punishable by imprisonment in the state prison for not more than ten years.

107. Section 8395. **Burning or Destroying Lumber, Etc., Boats.**

Every person who wilfully and maliciously burns, injures, or destroys any pile or raft of wood, plank, boards, or other lumber, or any part thereof, or cuts loose or sets adrift any such raft or any part thereof, or cuts, breaks, injures, sinks, or sets adrift any vessel, boat, or skiff, the property of another, is punishable by a fine in any sum less than $300, or by imprisonment in the county jail not exceeding six months.

108. Section 8468. **Exposing Growing Trees to Fire.**

Any person negligently or wilfully exposing growing trees, shrubs, or undergrowth standing on the public domain to danger of destruction by fire shall be guilty of a misdemeanor.

109. Section 8469. **Prairie, Wood, Grass, or Grain.**

Every person who maliciously or negligently sets on fire, or causes or procures to be set on fire, any woods, prairies, grasses, or grain on any

Repealed 3/14/27 Chapter

lands, public or private, is guilty of a misdemeanor.

110. Section 8470. **Obstructing Attempts to Extinguish Fire.**

Every person who, at the burning of a building, disobeys the lawful orders of any public officer or fireman, or offers any resistance to or interference with the lawful efforts of any fireman or company of firemen to extinguish the same, or engages in any disorderly conduct calculated to prevent the same from being extinguished, or who forbids, prevents, or dissuades others from assisting to extinguish the same, is guilty of a misdemeanor.

NEVADA

REVISED LAWS OF NEVADA 1912

111. Section 6579. Every person who shall wilfully or negligently set, or fail to carefully guard or extinguish any fire, whether on his own land or the land of another, whereby the timber or property of another shall be endangered, shall be guilty of a misdemeanor.

112. Section 6632. Every person who, upon departing from camp, or from any fire started by him in the open, wilfully and negligently leaves the fire or fires burning or unexhausted, or fails to thoroughly extinguish the same, is guilty of a misdemeanor.

113. Section 6633. Every person who lights a fire for any purpose along the road through any woodland, or upon the same, or at any other place in the open, and thereby, or by any other means, sets fire to any growing timber or forest, shrubbery, crops, grass or vegetation, and thereby causes the destruction of any timber, forest, crops, grass, vegetation or property not his own, of the value of fifty dollars or more, shall be guilty of a fel-

ony and imprisoned in the state prison for not less than one year nor more than five years, and in addition thereto may be fined in a sum not exceeding ten thousand dollars and not exceeding twice the value of the property destroyed, in addition to being liable to the owner of such property for the full value thereof in a civil action.

ARIZONA

114. Section 390. Every person who wilfully or negligently sets on fire, or causes or procures to be set on fire, any woods, grasses, or grain, on any lands, is guilty of a misdemeanor.

115. Section 391. Any person or persons who shall wilfully and deliberately set fire to any wooded country or forest belonging to this state, or to the United States, within this state, or to any place from which fire shall be communicated to any such wooded country or forest, or who shall accidentally set fire to any such wooded country or forest, or to any place from which fire shall be communicated to any such wooded country or forest, and shall not extinguish the same, or use every effort to that end, or who shall build any fire, for lawful purpose or otherwise, in or near any such wooded country or forest, and through carelessness or neglect, shall permit said fire to extend to and burn through such wooded country or forest, shall be deemed guilty of a misdemeanor, and, on conviction before a court of competent jurisdiction, shall be punishable by a fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or by both such fine and imprisonment; Provided, That nothing herein contained shall apply to any person who in good faith shall set a back fire to prevent the extension of a fire already burning.

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